

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 28**

SHAMROCK FOODS COMPANY and BAKERY, CONFECTIONARY, TOBACCO WORKERS, AND GRAIN MILLERS' INTERNATIONAL UNION, LOCAL UNION NO. 232, AFL-CIO/CLC	CASE NO. 28-CA-150157
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**REQUEST FOR SPECIAL PERMISSION TO APPEAL ADMINISTRATIVE LAW
JUDGE'S ORDER DENYING SHAMROCK FOOD COMPANY'S
PETITION TO REVOKE SUBPOENA DUCES TECUM B-1-NZDQTZ**

Pursuant to Rule 102.26 of the Board's Rules and Regulations, Shamrock Foods Company ("Employer") files this Request for Special Permission to Appeal ("Special Appeal") the Administrative Law Judge's September 4, 2015 Order denying the Employer's Petition to Revoke Subpoena Duces Tecum B-1-NZDQTZ ("Subpoena"). The bases for the Employer's Special Appeal are set forth below.¹

1. On August 25, 2015, Counsel for the General Counsel ("General Counsel") served the Subpoena attached as Exhibit A. On September 1, 2015, the Employer filed and served its Petition to Revoke. A copy of the Petition to Revoke is attached as Exhibit B. On September 4, 2015, the Administrative Law Judge (the "ALJ") issued an Order (the "Order") denying the Petition to Revoke with some exceptions not relevant to this Special Appeal. A copy of the Order is appended as Exhibit C. For reference, copies of the Complaint as well as General Counsel's amendments thereto are attached as Exhibit D.
2. The Employer seeks to appeal from the denial of its Petition to Revoke with respect to

¹ This Special Appeal is not intended to provide a complete catalog of the bases upon which the Subpoena should have been revoked. The Employer therefore reserves the right to assert additional arguments, to the extent necessary, in the event that it subsequently files exceptions to the ALJ's eventual decision.

Request Nos. 28, 29, 32, 35, 57-59, and 64, which apparently relate to General Counsel's allegation that individual employees Thomas Wallace and Mario Lerma were improperly disciplined. The Subpoena, however, demands production of documents that go far beyond the scope of these allegations, and should therefore be revoked.

a. For example, the Complaint alleges that Shamrock discharged Wallace in April 2015 on the basis of his alleged concerted activity. Similarly, Shamrock is alleged to have disciplined Lerma in May 2015 for purportedly assisting the Union. Yet, with the exception of Request Nos. 32 and 64, the Requests pertaining to Wallace and Lerma are improperly subject to the Subpoena's January 1, 2014 time frame. *See id.* at Paragraphs I, 28-31, 33, 57-59. Request Nos. 32 and 64 are similarly improper in that they propose a timeframe of January 1, 2015. *See id.* at Paragraph 32. As such, these Requests are overbroad as to time.

b. The Requests pertaining to Wallace and Lerma are also overbroad as to substance. The Complaint allegations are specifically limited to Wallace's April 2015 discharge and Lerma's purported May 2015 discipline. However, the Subpoena demands, among other expansive items:

- All documents showing dates of employment, job titles, job duties, dates of job titles, rates of pay, performance evaluations, and prior corrective or disciplinary actions and the reasons for such actions for both Wallace and Lerma. *See id.* at ¶¶ 28, 57;
- All disciplinary records, verbal warnings, written warnings, suspension notices, termination forms, employee records, memoranda, letters, notes, e-mails, and text messages, related to investigation, discipline, suspension, layoff, and/or discharge of Wallace or Lerma. *See id.* at ¶¶ 29, 58;
- All e-mails, notes, memoranda, written memorializations of oral communications, video recordings, audio recordings, correspondence, text

messages and other communications between or among Shamrock's managers, supervisors, representatives or agents concerning or referencing Wallace or Lerma since January 1, 2015. *See id.* at ¶¶ 32, 64; and

- c. In addition, while the Complaint alleges that a Separation Agreement presented to Wallace was unlawful, Subpoena Request No. 35 purports to require production of *all* such agreements. *See id.* at Paragraph 35. The Complaint does not allege a violation in regard to any other individual.

These Requests are not, in any sense, "drafted as narrowly and specifically as is practicable" in light of the Complaint allegations. *See* NLRB Casehandling Manual (Unfair Labor Practice Cases) at ¶ 11776. Indeed, the General Counsel's Subpoena includes several, separate requests that are directed *specifically* toward Wallace's April 2015 discharge and Lerma's alleged discipline in May 2015. (*See id.* ¶¶ 30, 31, 60-62). The fact that the Requests described above are listed *separately* in the Subpoena confirms that they are intended to elicit documents beyond the scope of the Complaint. Accordingly, these Requests are improper. *See Hoschton Garment Co.*, 279 N.L.R.B. 565, 566 n.4 (1986) (subpoena duces tecum revoked where it requested records that did not pertain to employer's stated motive for discharge).

4. The Employer seeks to appeal from the denial of its Petition to Revoke with respect to Request Nos. 16-20, 23-27, 36-45, and 47-49 purportedly related to Complaint allegations concerning employer speech. The Complaint identifies a number of particular statements allegedly made by Shamrock supervisors that the General Counsel asserts were unlawful. The Subpoena Requests pertaining to these statements, however, again go well beyond the scope of the Complaint.
 - a. For example, Paragraphs 5(v) and 5(y) of the Complaint allege unlawful activity by David Garcia on May 1st and by Karen Garzon on June 15-17th and July 8th at

Respondent's facility. However, related Request Nos. 41, 42, and 49 contain no date or location limitations at all.

- b. Similarly, Request Nos. 16-20, 23-27, 36-40, 43-45, and 47-48 demand all documents indicating the "time, date, and manner" of labor-related conversations and events involving various alleged Shamrock supervisors. The corresponding Complaint allegations, on the other hand, describe particular statements that are claimed to be unlawful that were purportedly made by these individuals on particular dates.

These Requests exceed the Complaint's specific allegations and, as such, should be revoked.

- 6. The Employer seeks to appeal from the denial of its Petition to Revoke with respect to Request Nos. 9, 13-15, 50-53, 55, 56, 63, and 66, based on the lack of any pretense of a relationship to the matters alleged in the Complaint.

- a. For example, Request No. 14 demands production of all "[v]ideo recordings, audio recordings, photographs, notes, reports and all other documents showing or describing activities related to the Union or to unions generally, including documents or notes reflecting the circumstances under which such recordings or photographs were obtained." Request No. 51 seeks production of all "[f]lyers posted at Respondent's facility since about January 1, 2015 referencing the Union, or unions generally and any copies, photographs, videos, or other recordings of such flyers." There is no Complaint allegation concerning such matters.

- b. Section 8(c) of the Act prohibits the Board from finding a violation based on "[t]he expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form . . . if such expression contains no threat of reprisal or force or promise of benefit." 29 U.S.C. § 158(c). Congress amended the Act to include this language specifically based on its view that the

Board was “regulat[ing] employer speech too restrictively.” *Nat’l Ass’n of Mfrs. v. NLRB*, 717 F.3d 947, 954 (D.C. Cir. 2013), *overruled in part on other grounds*, *Am. Meat Inst. v. United States Dep’t of Agric.*, 760 F.3d 18 (D.C. Cir. 2014); see also S. Rep. No. 80–105, pt. 2, pp 23–24 (1947). The Supreme Court thus has recognized that Section 8(c)’s protections are at least as broad as the First Amendment. *Chamber of Commerce of the United States v. Brown*, 554 U.S. 60, 67 (2008)(“From one vantage, § 8(c) merely implements the First Amendment in that it responded to particular constitutional rulings of the NLRB.”) (internal quotations and citations omitted).

- c. Nonetheless, the General Counsel’s position is that an accusation of union animus is sufficient to provide it with unfettered review of employer communications. This argument, if accepted, will create a chilling effect on employers’ exercise of their free speech rights guaranteed under both the Act and the United States Constitution. Indeed, the General Counsel refused in this case to provide even the names of witnesses *that it intended to call at the hearing* on the basis that to do so might chill the exercise of Section 7 rights. Its demand for production of Shamrock’s internal communications presents no less a danger in regard to rights protected under Section 8(c).
- d. Rather than being permitted to sift through Shamrock’s internal documents in a boundless search for additional unsupported allegations, the General Counsel should be limited to communications related to the violations it has asserted. These Requests are therefore improper. *See Sprain Brook Manor*, 2014 NLRB LEXIS 86 at *1 (Feb. 6, 2014) (“We find that the scope of Paragraph 8 is overbroad to the extent it seeks documents and correspondence between the Petitioner and ‘any other union.’”).
- d. Even further removed from the Complaint, Request No. 53 demands production of a list of all Shamrock warehouse employees, along with their dates of hire, job

classifications, job histories, pay rates, changes in pay rates, and changes in employment status. Request No. 52 further purports to require production of every warehouse employee's payroll history, on a week-by-week basis, from October 1, 2014 through the present. These Requests do not relate in any way to the Complaint, and will simply provide the Union with information to which it would not otherwise be entitled given the fact that it has never filed an election petition. These Requests therefore are improper and should be revoked. *Electrical Energy Svcs., Inc.*, 288 NLRB 925, 931 (1988) (revoking subpoena being used for ulterior purpose).

For all of the reasons set forth above, Subpoena Duces Tecum No. B-1-NZDQTZ is defective, the ALJ's Order denying the Petition to Revoke was wrongly decided, and the Board should grant special permission to appeal and revoke the Subpoena as requested herein. *See* 29 C.F.R. §102.31(b) (the Board or the ALJ "shall revoke a subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena").

Respectfully submitted,

BAKER HOSTETLER LLP
Jay P. Krupin
Nancy Inesta
Todd A. Dawson

Dated: September 11, 2015



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 11th day of September, 2015, a true copy of the foregoing was filed electronically in .pdf format through the National Labor Relations Board's Internet website.

Copies were also served by hand delivery on Administrative Law Judge Jeffrey D. Wedekind, and Counsel for the General Counsel Sara Demirok and Elise Oviedo.

Copies were also sent by UPS overnight mail to:

Bakery, Confectionery, Tobacco Workers' and Grain Millers
International Union, Local Union No. 232, AFL-CIO-CLC
3117 North 16th Street, Suite 220
Phoenix, Arizona 85016-7679

David A. Rosenfeld, Esq.
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, California 94501



Todd A. Dawson

EXHIBIT A

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

Custodian of Records
Shamrock Foods Company
2228 North Black Canyon Highway
Phoenix, AZ 85009-2791

To

As requested by Sara S. Demirok, Counsel for General Counsel

whose address is 2600 North Central Avenue, Suite 1400, Phoenix, AZ 85004
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
_____ of the National Labor Relations Board

at Hearing Room, 2600 N Central, Suite 1400

in the City of Phoenix, Arizona

on Tuesday the 8th day of September 2015 at 1:00 PM or any adjourned

or rescheduled date to testify in Shamrock Foods Company
Case 28-CA-150157
(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R. Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

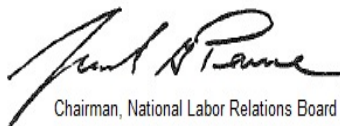
B-1-NZDQ TZ



Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Phoenix, Arizona

Dated: August 25, 2015


Chairman, National Labor Relations Board

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

ATTACHMENT TO SUBPOENA DUCES TECUM

**RE: Shamrock Foods Company
Case 28-CA-150157**

DEFINITIONS AND INSTRUCTIONS

- a. "Document" means any existing printed, typewritten or otherwise recorded material of whatever character, records stored on computer or electronically, records kept on microfiche or written by hand or produced by hand and graphic material, including without limitation, checks, cancelled checks, computer hard drives, discs and/or files and all data contained therein, computer printouts, E-mail communications and records, any marginal or "post-it" or "sticky pad" comments appearing on or with documents, licenses, files, letters, facsimile transmissions, memoranda, telegrams, minutes, notes, contracts, agreements, transcripts, diaries, appointment books, reports, records, payroll records, books, lists, logs, worksheets, ledgers, summaries of records of telephone conversations, summaries of records of personal conversations, interviews, meetings, accountants' or bookkeepers' work papers, records of meetings or conference reports, drafts, work papers, calendars, interoffice communications, financial statements, inventories, news reports, periodicals, press releases, graphs, charts, advertisements, statements, affidavits, photographs, negatives, slides, disks, reels, microfilm, audio or video tapes and any duplicate copies of any such material in the possession of, control of, or available to the subpoenaed party, or any agent, representative or other person acting in cooperation with, in concert with or on behalf of the subpoenaed party.
- b. "Respondent" means Shamrock Foods Company, its subsidiaries, directors, managers, supervisors, agents, and/or representatives.
- c. "Respondent's office facility" means the facility located at 2228 N. Black Canyon Highway, Phoenix, Arizona.
- d. "Respondent's warehouse facility" means the facility located at and 2450 N. 29th Avenue, Phoenix, Arizona.
- e. "Respondent's facilities" means the office and warehouse facilities located in Phoenix, Arizona.
- f. "The Union" means Bakery, Confectionery, Tobacco Workers' and Grain Millers International Union, Local Union No. 232, AFL-CIO-CLC.
- g. "Unit employees" means all full-time and regular part-time employees employed at Respondent's warehouse facility.
- h. "Person" or "persons" means natural persons, corporations, limited liability companies, partnerships, sole proprietorships, associations, organizations, trusts, joint ventures, groups of natural persons or other organizations, or any other kind of entity.

- i. “Period covered by this subpoena” means the period from **January 1, 2014** through the date of this subpoena. The subpoena seeks only documents from that period unless another period is specified. This subpoena request is continuing in character and if additional responsive documents come to your attention after the date of production, such documents must be promptly produced.
- j. Any copies of documents that are different in any way from the original, such as by interlineation, receipt stamp, notation, or indication of copies sent or received, are considered original documents and must be produced separately from the originals.
- k. If any document covered by this subpoena contains codes or classifications, all documents explaining or defining the codes or classifications used in the document must also be produced.
- l. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- m. All documents produced pursuant to this subpoena should be presented as they are kept in the usual course of business or organized by the subpoena paragraph to which the document or set of documents is responsive.
- n. This subpoena applies to documents in your possession, custody, or control.
- o. If a claim of privilege is made as to any document which is the subject of this subpoena, a claim of privilege must be expressly made and you must describe the nature of the withheld document, communication, or tangible thing in a manner that, without revealing information itself privileged or protected, will enable an assessment of the claim to be made.
- p. Unless otherwise stated, this subpoena does not supersede, revoke or cancel any other subpoena(s) previously issued in this proceeding.

DOCUMENTS REQUESTED

With respect to Complaint paragraph 4, provide copies of the following documents:

1. Documents, including, but not limited to, job descriptions, appraisals, bulletins, and memoranda, showing the job title, general and specific duties, authority, responsibilities, hourly wage rates or salaries, fringe benefits, and work schedules, including any changes or amendments thereto, and the dates of such changes for the following individuals:
 - a) Ivan Vaivao
 - b) Mark Engdahl
 - c) Kent McClelland
 - d) Dwayne Thomas
 - e) Joe Remblance
 - f) Armando Gutierrez
 - g) Jerry Kropman
 - h) Natalie Wright
 - i) Brian Nicklen
 - j) Jake Myers
 - k) Leland Scott
 - l) Karen Garzon
 - m) Art Manning
 - n) Zack White
 - o) Bob Beake
 - p) David Garcia
2. Employment applications, work histories, performance appraisals, disciplinary records, and other documents and communications that traditionally would be maintained in a personnel file or its equivalent for the individuals named in Subpoena paragraph 1.
3. Documents showing instances in which any of the individuals named in Subpoena paragraph 1 evaluated the work performance, attendance, or conduct of any of Respondent's Unit employees; made oral or written reports to the Respondent of any alleged work rule violations by Respondent's Unit employees; assigned work to Respondent's Unit employees; or recommended, made, or granted promotions, demotions, disciplinary actions, layoffs, recalls, transfers, suspensions, terminations or any other changes or adjustments in the terms and conditions of employment of Respondent's Unit employees:
4. Documents drafted, typed, e-mailed, signed, or written by, or based in whole or in part on information provided or authorized by any of the named individuals in Subpoena paragraph 1 that relate to any of the following:
 - a) the interview of applicants, hiring of applicants, and/or the recommendation of such action;
 - b) requests by employees to transfer, transfer of employees, and/or the recommendation of such action;

- c) the evaluation of employee work performance, and/or recommendations related to such evaluations;
 - d) granting promotions, wage increases, bonuses, and/or rewards, and/or the recommendation of such action;
 - e) the issuance of disciplinary action, including but not limited to verbal warnings, oral counseling, written warnings, suspensions, and discharges, to employees, and/or the recommendation of such action;
 - f) the assignment of work to employees, employee scheduling, directing and/or requesting that employees work overtime and/or hours different from their normal schedules, and/or the recommendation of such action;
 - g) the direction of employees' work, and/or the recommendation of such action;
 - h) requests for time off, granting or denying requests for time off, and/or the recommendation of such action;
 - i) adjustment of employee grievances, and/or the recommendation of such action;
 - j) the layoff of employees and/or recall of employees from layoff and/or the recommendation of such action;
 - k) the formulation or effectuation of any management or labor relations policies;
 - l) decisions affecting Respondent's operations; and/or
 - m) obtaining credit, authorization or making of purchases, or entry into contracts on behalf of or as an agent of Respondent.
5. Documents that indicate or reflect involvement or participation, including recommendations, by the named individuals in Subpoena paragraph 1 any of the actions described in Subpoena paragraph 4.
6. Documents, including but not limited to meeting minutes, notes, and attendance records, showing the dates of all supervisors' and/or managers' meetings, the names of all individuals who attended such meetings, and what was discussed in such meetings.
7. Organizational charts and all other documents that show the Respondent's managerial structure, hierarchy or chain of command for the Respondent's facility during the period covered by this subpoena, including documents that show any changes to the reporting protocols and chain of command.

*In lieu of providing the information requested in Subpoena paragraphs 1-7, Respondent may stipulate that the named individuals are supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act.

With respect to Complaint paragraphs 5 and 6, provide copies of the following documents:

8. Documents that show or describe what was said during a Town Hall staff meeting about March 31, 2015 at Respondent's warehouse facility, including all documents that indicate the time, date, and location, the identities of those who participated in or were present for the meeting.

9. Documents, including, but not limited to, e-mails, notes, memoranda, written memorializations of oral communications, correspondence, and other communications between or among Respondent's managers, supervisors, representatives or agents, and Unit employees concerning or referencing complaints made about health benefits.
10. A complete copy of Respondent's Associate Handbook and any amendments thereto, including the dates that the amendments were made or enacted, and when and how the amendments were distributed to Unit employees.
11. Documents, including, but not limited to, employee handbooks, work rules, policy manuals, bulletins, memoranda, notices, and any amendments thereto, as will show the rules, regulations, guidelines, and policies and procedures regarding:
 - a) Protecting the Company's Confidential Information
 - b) Non-Disclosure/ Assignment Agreement
 - c) Requests by Regulatory Authorities
 - d) Company Spokespeople
 - e) Electronic and Telephonic Communications
 - f) Improper use of Respondent's E-mail and internet system, including, but not limited to, no downloading of non-business related data, and no participation in web-based surveys without authorization.
 - g) Blogging
 - h) Guidelines to Prohibited Activities
 - i) Reporting Violations
 - j) Guidelines to Appropriate Conduct
 - k) No Solicitation, No Distribution
12. Documents that show the work rules or conditions of employment applicable to Unit employees employed at Respondent's facility at any time during the period covered by this subpoena, including documents showing any changes to the rules, the effective dates of any such changes, and a description or statement of the changes.
13. Documents, including, but not limited to, e-mails, notes, memoranda, written memorializations of oral communications, correspondence, and other communications between or among Respondent's managers, supervisors, representatives or agents concerning or referencing the Union, Union organizers, Union supporters, union activities, union meetings, union literature, and/or union cards.
14. Video recordings, audio recordings, photographs, notes, reports and all other documents showing or describing activities related to the Union or to unions generally, including documents or notes reflecting the circumstances under which such recordings or photographs were obtained.
15. Documents discussing meetings Respondent held with Unit employees during the period covered by this subpoena, where the topic of the Union, or union activities generally, were discussed including documents that show the time, date, and location of each meeting, the

identities of those who spoke at each meeting, the identities of those who attended each meeting.

16. Documents that show or describe a conversation in which Zack White (White) participated about January 25, 2015, at Respondent's warehouse facility, in which the Union or an organizing campaign generally, was mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
17. Documents that show or describe a conversation in which Mark Engdahl (Engdahl) participated about January 28, 2015, at Respondent's warehouse facility, in which the Union, or union activities generally, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
18. Documents that show or describe a conversation in which Engdahl participated about January 28, 2015, at Respondent's warehouse facility, in which Engdahl told employees to make an appointment to come see Respondent regarding their working conditions, including all documents that indicate the time, date, and location of each such conversation or subsequent appointment, the identities of those who participated in or witnessed the conversation or subsequent appointment, and what was said during each such conversation or subsequent appointment.
19. Documents that show or describe a conversation in which Natalie Wright (Wright) participated about January 28, 2015, at Respondent's warehouse facility, in which Unit employee complaints or grievances were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
20. Documents that show or describe a conversation in which Jake Myers participated about January 28, 2015, at Respondent's warehouse facility, in which the Union, or union activities generally, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
21. Documents that show the whereabouts of Art Manning (Manning) on January 28, 2015, including, but not limited to, receipts or credit card statements.
22. Documents, including, but not limited to, text messages and emails, referencing Manning's whereabouts on January 28, 2015.
23. Documents that show or describe a conversation in which Ivan Vaivao (Vaivao) participated about February 5, 2015, at Respondent's warehouse facility, in which Unit employee complaints or grievances were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who

participated in or witnessed the conversation, and what was said during each such conversation.

24. Documents that show or describe conversations in which Vaivao and Wright participated in February 2015, at Respondent's warehouse facility, in which Unit employee complaints or grievances were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
25. Documents that show or describe a conversation in which Vaivao participated about February 24, 2015, at Respondent's warehouse facility, in which the Union, or union activities generally, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
26. Documents that show or describe a conversation in which Vaivao, Brian Nicklen (Nicklen) and a Human Resource Representative participated about March 26, 2015, at Respondent's warehouse facility, in which the Union or union organizing activities generally, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
27. Documents that show or describe a conversation in which Vaivao, Nicklen, and a Human Resource Representative participated about March 26, 2015, at Respondent's warehouse facility, in which work shifts, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
28. The complete personnel and employment files, (excluding tax records, workers compensation forms, and social security information), including documents showing dates of employment, job titles, job duties, dates of job titles, rates of pay, performance evaluations, corrective or disciplinary actions and the reasons for such action, suspensions and the reasons for such action, and discharge and the reasons for such action for Thomas Wallace (Wallace).
29. Documents, including but not limited to disciplinary records, verbal warnings, written warnings, suspension notices, termination forms, employee records, memoranda, letters, notes, e-mails, and text messages, related to the investigation, discipline, suspension, layoff, and/or discharge of Wallace.
30. Documents and communications which set forth, discuss, and/or relate to the reasons for which Wallace was discharged.
31. Documents, including but not limited to recordings or video surveillance footage, on which Respondent relied in discharging Wallace.
32. Documents, including, but not limited to, e-mails, notes, memoranda, written memorializations of oral communications, video recordings, audio recordings,

correspondence, text messages and other communications between or among Respondent's managers, supervisors, representatives or agents concerning or referencing Wallace since January 1, 2015.

33. Documents and communications, including but not limited to memoranda, letters, notes, e-mails, and text messages, related to knowledge and/or suspicion of union activities and/or support by Wallace.
34. The complete personnel and employment files employees who have been investigated, disciplined, suspended, or discharged for acting belligerently, interrupting a supervisor or manager, or leaving a meeting without permission.
35. A complete copy of Respondent's Separation Agreement and Release and Waiver forms, and any amendments thereto, including the dates that the amendments were made or enacted.
36. Documents that show or describe a conversation in which Manning participated about April 27, 2015, at Respondent's warehouse facility, in which union organizing activities taking place in the break room were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
37. Documents that show or describe a conversation in which Engdahl participated about April 29, 2015, at Respondent's warehouse facility, in which in which the Union, or union activities generally, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
38. Documents that show or describe a conversation in which Joe Remblance participated about April 29, 2015, at Respondent's warehouse facility, in which the Union, or union activities generally, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
39. Documents that show or describe a conversation in which David Garcia (Garcia) participated about May 1, 2015, at Respondent's warehouse facility, in which the Union or union cards generally, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
40. Documents that show or describe a conversation in which Garcia participated about May 1, 2015, at Respondent's warehouse facility, in which Unit employee complaints or grievances, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.

41. Documents showing communications sent or received by Garcia, which relate to Union cards.
42. Documents showing communications sent or received by Garcia related to searches of employees' forklifts, clipboards, or other belongings.
43. Documents that show or describe a conversation in which Engdahl and Vaivao participated about May 5, 2015, at Respondent's warehouse facility, in which discussions or heckling related to the Union were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
44. Documents that show or describe a conversation in which Engdahl and Vaivao participated about May 5, 2015, at Respondent's warehouse facility, in which problems on the floor, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
45. Documents that show or describe a conversation in which Engdahl and Vaivao participated about May 5, 2015, at Respondent's warehouse facility, in which heckling, insulting or a potential employee slow-down, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
46. A copy of a letter from Kent McClelland issued to Unit employees on about May 8, 2015.
47. Documents that show or describe a conversation in which Karen Garzon (Garzon) participated about May 25, 2015, at Respondent's warehouse facility, in which the Union or union activities generally, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
48. Documents that show or describe a conversation in which Garzon participated about May 25, 2015, at Respondent's warehouse facility, in which the Union or union activities generally, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
49. Documents showing communications sent or received by Garzon, which relate to Union flyers, flyers unrelated to the Union, or non-work-related documents.
50. Union flyers, flyers unrelated to the Union, or non-work-related literature removed from any part of Respondent's facility by Respondent.
51. Flyers posted at Respondent's facility since about January 1, 2015 referencing the Union, or unions generally and any copies, photographs, videos, or other recordings of such flyers.

52. The payroll records, shown pay-period by pay-period, of Unit employees since October 1, 2014.
53. Since October 1, 2014, documents that show:
 - a) the identity of Respondent's Unit employees;
 - b) the dates of hire;
 - c) the job classifications or positions occupied by such individuals;
 - d) the rates of pay of such individuals;
 - e) the nature and effective dates of all changes to the pay of such individuals;
 - f) all changes to the employment status of such individuals; and
 - g) the dates of any such changes.
54. Documents that show which Unit employees received wage increases on about May 29, 2015, at Respondent's warehouse facility, the reasons why Respondent decided to award wage increases, and what factors Respondent considered in deciding which Unit employees would receive wage increases.
55. Video recordings, audio recordings, photographs, notes, logs, reports and all other documents showing or describing activities related to the Union or to unions generally, including documents or notes reflecting the circumstances under which such recordings or photographs were obtained.
56. Documents as will show the impressions, perceptions, or descriptions of employees' sentiments regarding the Union or unions generally during the period covered by this subpoena, including lists as indicated for each department which employees were perceived by which supervisors as likely supporters or opponents of the Union.
57. The complete personnel and employment files, (excluding tax records, workers compensation forms, and social security information), including documents showing dates of employment, job titles, job duties, dates of job titles, rates of pay, performance evaluations, corrective or disciplinary actions and the reasons for such action, suspensions and the reasons for such action, and discharge and the reasons for such action for Mario Lerma (Lerma).
58. Documents, including but not limited to disciplinary records, verbal warnings, written warnings, suspension notices, termination forms, employee records, memoranda, letters, notes, e-mails, and text messages, related to the investigation or discipline of Lerma.
59. Documents which set forth, discuss, and/or relate to the reasons for which Lerma was disciplined.
60. Documents which set forth, discuss, and/or relate to the reasons for which Lerma was called to Engdahl's office about May 5, 2015.
61. Documents related to a meeting attended by Engdahl, Vaivao, and Lerma in Engdahl's office about May 5, 2015.

62. Documents, including but not limited to recordings or video surveillance footage, on which Respondent relied in disciplining Lerma and/or calling him to Engdahl's office about May 5, 2015.
63. Documents related to employees heckling employees, insulting employees, and/or discussing a potential slow-down on the floor at Respondent's warehouse facility.
64. Documents, including, but not limited to, e-mails, notes, memoranda, written memorializations of oral communications, video recordings, audio recordings, correspondence, text messages and other communications between or among Respondent's managers, supervisors, representatives or agents concerning or referencing Lerma since January 1, 2015.
65. Documents and communications, including but not limited to memoranda, letters, notes, e-mails, and text messages, related to knowledge and/or suspicion of union activities and/or support by Lerma.
66. The complete personnel and employment files employees who have been investigated, disciplined, suspended, or discharged for heckling employees, insulting employees, and/or discussing a potential slow-down.

In Lieu of Provision

IN LIEU OF THE RECORDS REQUESTED IN THE ABOVE PARAGRAPHS, PROVIDED NOTICE IS RECEIVED NO LATER THAN **5:00 P.M., SEPTEMBER 3, 2015**, RESPONDENT MAY MAKE SAID RECORDS AVAILABLE AT THE NATIONAL LABOR RELATIONS BOARD PHOENIX REGIONAL OFFICE, 2600 NORTH CENTRAL AVENUE, SUITE 1400, PHOENIX, ARIZONA TO AN AGENT OR AGENTS OF THE NATIONAL LABOR RELATIONS BOARD FOR HIS, HER OR THEIR INSPECTION, COPYING AND USE NO LATER THAN **SEPTEMBER 4, 2015** PROVIDED FURTHER, SUCH RECORDS AND DOCUMENTS REQUESTED ABOVE, WILL NOT BE REQUIRED TO BE PRODUCED AT HEARING IN THIS MATTER IF THE RESPONDENT AND COUNSEL FOR THE GENERAL COUNSEL ARRIVE AT A STIPULATION WITH REGARD TO THE INFORMATION CONTAINED THEREIN AND SUCH STIPULATION IS RECEIVED IN EVIDENCE BY THE ADMINISTRATIVE LAW JUDGE HEARING THIS MATTER.

EXHIBIT B

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 28**

SHAMROCK FOODS COMPANY and BAKERY, CONFECTIONARY, TOBACCO WORKERS, AND GRAIN MILLERS' INTERNATIONAL UNION, LOCAL UNION NO. 232, AFL-CIO/CLC	CASE NO. 28-CA-150157 PETITION TO REVOKE AND OBJECTIONS TO SUBPOENA
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Pursuant to Section 11(1) of the National Labor Relations Act and Section 102.31(b) of the Rules and Regulations of the National Labor Relations Board (“NLRB”), Respondent Shamrock Foods Company (“Shamrock”) by and through its undersigned attorneys, respectfully petitions for an order revoking, in part, Subpoena Duces Tecum B-1-NZDQ TZ (the “Subpoena,” attached as Exhibit 1), served upon the Custodian of Records for Respondent on August 25, 2015 by Counsel for the General Counsel (“General Counsel”) in the above-captioned case (“Subpoena”), and files objections to the Subpoena as follows:¹

I. PRELIMINARY STATEMENT

The General Counsel’s Subpoena is an improper attempt to prejudice Shamrock and expand the scope of this case by means of pre-hearing discovery. The Complaint and Notice of Hearing issued in this matter on July 21, 2015 (the “Complaint”) alleges violations in regard to 15 provisions of Shamrock’s employee handbook, statements allegedly made by individuals identified in the Complaint as Shamrock supervisors, and two disciplinary actions purportedly

¹ In the event that this Petition should be denied in whole or in part, Respondent respectfully requests that this Petition be made a part of the record in this case.

taken against two employees (Thomas Wallace and Mario Lerma). As set forth below, however, the Subpoena demands production of 66 categories of documents, the overwhelming majority of which do not relate to any matter alleged in the Complaint. These flaws are particularly prejudicial in light of the fact that Shamrock was permitted only nine business days to collect responsive materials.

The Board's Rules and Regulations mandate that the Board or the ALJ "shall revoke a subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid." 29 C.F.R. §102.31(b). The NLRB's Casehandling Manual similarly instructs that "[a] subpoena duces tecum should seek relevant evidence and should be drafted as narrowly and specifically as is practicable." NLRB Casehandling Manual (ULP Cases) at ¶ 11776. The Subpoena at issue here fails to satisfy these requirements. Accordingly, it should be revoked to the extent described herein.

II. GENERAL OBJECTIONS TO SUBPOENA

Objection is made to the Subpoena as a whole and to certain of the requests in the Subpoena as follows:

1. Shamrock objects to the Subpoena and to any individual request to the extent they seek production of documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Such documents shall not be produced and any inadvertent production thereof shall not be deemed a waiver of any privilege with respect to such documents or of any attorney-client privilege or any attorney work-product doctrine which may apply.

2. Shamrock objects to the Subpoena and to any individual request to the extent they seek production of documents protected by privileges extended to confidential, proprietary and non-public financial information. Such documents shall not be produced, or, if produced,

either inadvertently or voluntarily, such production shall not be deemed a waiver of any privilege beyond the extent necessary for a fair resolution of this action.

3. Shamrock objects to the Subpoena and to any individual request to the extent they seek documents not in Shamrock's possession, custody or control, including documents in the possession of third parties.

4. Shamrock objects to the Subpoena and to any individual request to the extent they seek to elicit documents which are not relevant to the subject matter of this action.

5. Shamrock objects to the Subpoena and to any individual request as overbroad and unduly burdensome to the extent they seek "all" documents that might be responsive.

6. Shamrock does not represent that any document actually exists, but rather that Shamrock will diligently search for the documents responsive to the Subpoena.

III. OBJECTIONS TO SUBPOENA DEFINITIONS

A. The Subpoena Improperly Defines "Unit Employees."

The "Unit employees" definition contained in the Subpoena is an invention of the General Counsel with no basis in fact. The Union has never filed an election petition in this case or otherwise identified the employees it is seeking to represent. The General Counsel is attempting to fill this gap by unilaterally defining a "unit" of Shamrock's "full-time and regular part-time employees employed at Respondent's warehouse facility." This broad definition is to be applied throughout the Subpoena's 66 document demands, and would encompass the private information of hundreds of employees. *See* Subpoena at ¶¶ 3, 9-10, 12, 15, 19, 40, 46, and 52-54.

The General Counsel's attempt to create a putative "unit" by administrative fiat is not sufficient to satisfy the relevance requirement imposed by both the Board's Rules and Regulations and the General Counsel's Casehandling Manual (*see above*). Rather than arbitrarily defining a "unit" on the Union's behalf, the General Counsel instead should be required to identify the particular individuals for whom it is seeking information in each of its

document requests. This will permit a reasoned determination as to whether the requests are actually related to the matters alleged in the Complaint.

B. The Subpoena Improperly And Inaccurately Identifies The Respondent.

“[A] subpoena duces tecum should be addressed to the entity with control of the records sought.” NLRB Casehandling Manual (Unfair Labor Practice Cases) at ¶ 11776. The Subpoena in this case is addressed to the Custodian of Records located at 2228 N. Black Canyon Highway, Phoenix, Arizona. The Subpoena furthermore defines “Respondent’s office facility” as “the facility located at 2228 N. Black Canyon Highway, Phoenix, Arizona”. *See* Subpoena at Paragraph c. Finally, the Subpoena defines Shamrock’s “facilities” to include “the office and warehouse facilities located in Phoenix, Arizona.” Subpoena at Paragraph e.

Shamrock Foods, the Respondent in this case, is not located at the Black Canyon address. That address is instead occupied by Shamrock Farms Dairy Division (“Farms”), an entity that is distinct from Shamrock. Farms’ Custodian of Records is not within Shamrock’s control and is not in possession of any responsive documents. Moreover, Farms was not named as a respondent in the General Counsel’s Complaint and will not be a party to the hearing. To the extent that the General Counsel purposely included Farms in the Subpoena with the intention of demanding documents from that entity, the Subpoena is an impermissible attempt to expand the scope of this action and should be revoked. *See U.S. Security Assoc., Inc.*, 2012 NLRB LEXIS 3 (2012) (revoking portion of subpoena duces tecum requesting information pertaining to respondent’s employees in other regions).

C. The Subpoena Imposes An Improper Time Period.

In addition to the other fatal flaws in its Definitions section, the time period proposed in the Subpoena is improper. Paragraph i of the Subpoena instructs that the “[p]eriod covered by this subpoena” means “the period from **January 1, 2014** through the date of this subpoena.” *See* Subpoena at 2, Paragraph i (emphasis in original). Under Section 10(b) of the Act, a

charge must be filed no later than six (6) months after commission of the alleged wrongdoing. The Charge in this case was filed on April 15, 2015. Thus, any events prior to October 15, 2014, are outside the Act's strict limitations period.² The time frame for the Subpoena should be modified accordingly.

IV. OBJECTIONS TO DOCUMENT REQUESTS

A. The Subpoena's Document Requests Are Overbroad In Multiple Respects.

As explained above, the Complaint in this case alleges violations in regard to 15 provisions of Shamrock's Employee Handbook, a series of statements allegedly made by individuals identified in the Complaint as Shamrock supervisors, and disciplinary actions purportedly taken against two employees (Mr. Wallace and Mr. Lerma). Yet, an overwhelming majority of the Subpoena's document requests far exceed the scope of these allegations. These requests are contrary to the requirement that "[a] subpoena duces tecum should seek *relevant evidence* and should be drafted as *narrowly* and *specifically* as is practicable." NLRB Casehandling Manual (Unfair Labor Practice Cases) at ¶ 11776 (emphasis added). The Requests therefore should be revoked and/or modified to require production only of those documents that relate to matters alleged in the Complaint.³

OBJECTION NO. 1: Documents Pertaining To Alleged Supervisory Status (Request Nos. 1 Through 7).

Requests 1 through 7 are presumably directed toward establishing the supervisory status of various individuals referenced in the Complaint. These requests, however, are not limited to the timeframe in which these persons held positions that the General Counsel maintains are supervisory in nature. This is particularly noteworthy in light of the General Counsel's allegation in Paragraph 4 of the Complaint that the alleged supervisors held these

² The October 15th cutoff date applies only in regard to matters already alleged in the charge. To the extent that the General Counsel attempts to add new claims, those matters would be timely only if they occurred within the immediately preceding six months.

³ For ease of reference, Exhibit 2 attached hereto identifies for each Subpoena Request the objections explained below that are applicable.

positions “*at all material times.*” (Emphasis added). Thus, at a minimum, Request Nos. 1 through 7 should be limited to the time frame that the identified individuals held the titles listed in the Complaint.

Request No. 6 is additionally overbroad in that it requests documents showing all topics discussed at every supervisor meeting from January 1, 2014 through the present. There are no allegations of wrongdoing associated with these meetings set forth in the Complaint. Regardless, Shamrock will produce a list of individuals who attended supervisor/manager meetings, to the extent that such records exist. However, the fact that any of the named individuals happened to be present when a particular topic was discussed is not probative of Section 2(11)⁴ authority. Request No. 6 thus should be revoked on this basis as well. *Hoschton Garment Co.*, 279 N.L.R.B. 565, 566 n.4 (1986) (subpoena duces tecum revoked where it requested records that were “immaterial to the issue in this case”).

OBJECTION NO. 2: Documents Pertaining To Work Rules (Request Nos. 10 and 12).

As explained above, the Complaint alleges that 15 specific provisions of Shamrock’s Employee Handbook are unlawful. Yet, Subpoena Request Nos. 10 and 12 demand production of materials relating to *all* Shamrock work rules and conditions of employment and any changes to such rules and conditions. *See* Subpoena at ¶¶ 10, 12. The overbreadth of these requests is best demonstrated by contrasting them with Request No. 11, which requests documents pertaining *specifically* to the work rules alleged to be in violation of the Act. The fact that Request No. 11 is limited to the allegations of the Complaint precludes any doubt that Requests 10 and 12 are not. These requests are therefore improper, and should be revoked.⁵ *See* 29 C.F.R. §102.31(b); *see also Hoschton Garment Co.*, 279 N.L.R.B. 565, 566 n.4 (1986)

⁴ *See* 29 U.S.C. § 152(11).

⁵ Request No. 10, which demands production of Shamrock’s Employee Handbook is also improper in that the General Counsel already has a copy of this document. *Durham School Svcs.*, 2011 NLRB LEXIS 232 (May 9, 2011) (granting petition to revoke subpoena duces tecum request for documents already in General Counsel’s possession).

(subpoena duces tecum revoked where it requested records that were “immaterial to the issue in this case”).

**OBJECTION NO. 3: Documents Pertaining To Wallace And Lerma
(Request Nos. 28, 29, 32, 35, 57-59, 64).**

While the General Counsel’s Complaint alleges that individual employees Thomas Wallace and Mario Lerma were improperly disciplined, the Subpoena demands production of documents that go far beyond the scope of these allegations. The Complaint alleges that Shamrock discharged Wallace in April 2015 on the basis of his alleged concerted activity. Similarly, Shamrock is alleged to have disciplined Lerma in May 2015 for purportedly assisting the Union. Yet, with the exception of Request Nos. 32 and 64, the Requests pertaining to Wallace and Lerma are subject to the Subpoena’s inappropriate January 1, 2014 time frame. *See id.* at Paragraphs I, 28-31, 33, 57-59. Request Nos. 32 and 64 are similarly improper in that they propose a timeframe of January 1, 2015. *See id.* at Paragraph 32. As such, these Requests are overbroad as to time.

The Requests pertaining to Wallace and Lerma are also overbroad as to substance. The Complaint allegations are specifically limited to Wallace’s April 2015 discharge and Lerma’s purported May 2015 discipline. However, the Subpoena demands, among other expansive items:

- All documents showing dates of employment, job titles, job duties, dates of job titles, rates of pay, performance evaluations, and prior corrective or disciplinary actions and the reasons for such actions for both Wallace and Lerma. *See id.* at ¶¶ 28, 57;
- All disciplinary records, verbal warnings, written warnings, suspension notices, termination forms, employee records, memoranda, letters, notes, e-mails, and text messages, related to investigation, discipline, suspension, layoff, and/or discharge of Wallace or Lerma. *See id.* at ¶¶ 29, 58;
- All e-mails, notes, memoranda, written memorializations of oral communications, video recordings, audio recordings, correspondence, text messages and other communications between or among Shamrock’s managers, supervisors, representatives or agents concerning or referencing Wallace or Lerma since January 1, 2015. *See id.* at ¶¶ 32, 64; and

In addition, while the Complaint alleges that a Separation Agreement presented to Wallace was unlawful, Subpoena Request No. 35 purports to require production of *all* such agreements. *See id.* at Paragraph 35. The Complaint does not allege a violation in regard to any other individual.

These Requests are not, in any sense, “drafted as narrowly and specifically as is practicable” in light of the Complaint allegations. *See* NLRB Casehandling Manual (Unfair Labor Practice Cases) at ¶ 11776. Indeed, as with the Requests pertaining to work rules, the General Counsel’s Subpoena includes several, separate requests that are directed *specifically* toward Wallace’s April 2015 discharge and Lerma’s alleged discipline in May 2015. (*See id.* ¶¶ 30, 31, 60-62). The fact that the Requests described above are listed *separately* in the Subpoena confirms that they are intended to elicit documents beyond the scope of the Complaint. Accordingly, these Requests are improper. *See Hoschton Garment Co.*, 279 N.L.R.B. 565, 566 n.4 (1986) (subpoena duces tecum revoked where it requested records that did not pertain to employer’s stated motive for discharge).

OBJECTION NO. 4: Documents Concerning Art Manning (Request Nos. 21, 22).

Paragraph 5(j) of the Complaint alleges that Art Manning engaged in unlawful surveillance on January 28th at the Denny’s restaurant on I-17 and Thomas Road in Phoenix, Arizona. However, Request Nos. 21 and 22 demand documents that show Mr. Manning’s whereabouts, generally, on January 28th, including Mr. Manning’s credit card receipts. *See* Subpoena at ¶¶ 21-22. Moreover, Shamrock is not in possession of Manning’s personal information, and Manning is not a Section 2(11) supervisor. Accordingly, these Requests are improper and should be revoked. *See* NLRB Casehandling Manual (Unfair Labor Practice Cases) at ¶ 11776 (“[A] subpoena duces tecum should be addressed to the entity with control of the records sought.”)

OBJECTION NO. 5: Documents That Are Purportedly Related To Complaint Allegations Concerning Employer Speech (Request Nos. 16-20, 23-27, 36-45, 47-49).

The Complaint identifies a number of particular statements allegedly made by Shamrock supervisors that the General Counsel asserts were unlawful. The Subpoena Requests pertaining to these statements, however, again go well beyond the scope of the Complaint. For example, Paragraphs 5(v) and 5(y) of the Complaint allege unlawful activity by David Garcia on May 1st and by Karen Garzon on June 15-17th and July 8th at Respondent's facility. However, related Request Nos. 41, 42, and 49 contain no date or location limitations at all. Similarly, Request Nos. 16-20, 23-27, 36-40, 43-45, and 47-48 demand all documents indicating the "time, date, and manner" of labor-related conversations and events involving various alleged Shamrock supervisors. The corresponding Complaint allegations, on the other hand, describe particular statements that are claimed to be unlawful that were purportedly made by these individuals on particular dates.

These Requests exceed the Complaint's specific allegations and, as such, should be revoked. *See* 29 C.F.R. §102.31(b) (the Board or the ALJ "shall revoke a subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena"); *see also Hoschton Garment Co.*, 279 N.L.R.B. 565, 566 n.4 (1986) (subpoena duces tecum revoked where it requested records that were "immaterial to the issue in this case").

OBJECTION NO. 6: Requests That Are Not Related To A Specific Complaint Allegation (Request Nos. 9, 13-15, 50-53, 55, 56, 63, 66).

Finally, several of the Subpoena Requests lack any pretense of a relationship to the matters alleged in the Complaint. For example, Request No. 14 demands production of all "[v]ideo recordings, audio recordings, photographs, notes, reports and all other documents showing or describing activities related to the Union or to unions generally, including documents or notes reflecting the circumstances under which such recordings or photographs

were obtained.” Request No. 51 seeks production of all “[f]lyers posted at Respondent’s facility since about January 1, 2015 referencing the Union, or unions generally and any copies, photographs, videos, or other recordings of such flyers.” There is no Complaint allegation concerning such matters. These Requests are therefore improper. *See Sprain Brook Manor*, 2014 NLRB LEXIS 86 at *1 (Feb. 6, 2014) (“We find that the scope of Paragraph 8 is overbroad to the extent it seeks documents and correspondence between the Petitioner and ‘any other union.’”)

Even further removed from the Complaint, Request No. 53 demands production of a list of all Shamrock warehouse employees, along with their dates of hire, job classifications, job histories, pay rates, changes in pay rates, and changes in employment status. Request No. 52 further purports to require production of every warehouse employee’s payroll history, on a week-by-week basis, from October 1, 2014 through the present. These Requests do not relate in any way to the Complaint, and will simply provide the Union with information to which it would not otherwise be entitled given the fact that it has never filed an election petition. These Requests therefore are improper and should be revoked. *Electrical Energy Svcs., Inc.*, 288 NLRB 925, 931 (1988) (revoking subpoena being used for ulterior purpose).

B. The Subpoena Is Unduly Burdensome.

Finally, the Subpoena is unduly burdensome in that it demands production of *all* responsive documents. Virtually all of the Requests pertain to matters for which Shamrock does not maintain any centralized repository or tracking system. Accordingly, there is no way to identify and retrieve documents in a manner that would allow Shamrock to affirm that all responsive materials have been produced.

For example, while Shamrock will make a good faith effort to identify and produce responsive records of oral counseling as requested in Request 4(e), such matters are, by definition, typically not recorded. Similarly, Request 4 demands production of documents pertaining to decisions that were “based in whole or in part on information provided or

authorized by [individuals alleged to be supervisors].” Shamrock does not, however, maintain a list of every individual who “provides or authorizes” information related to every decision. Because these matters are not recorded, there will be no way for Shamrock to confirm that all responsive documents have been produced.

This problem is compounded by the fact that the Subpoena was served only 9 business days before the Hearing. Having issued the Complaint on July 21st, the General Counsel delayed service of the subpoena for over a month. Moreover, Shamrock has lost at least a full day and a half of preparation (and potentially more) due to the significant weather event that damaged its Arizona Foods facility during the evening of August 31st.

Presumably, the General Counsel will respond that Respondent can avoid many of these issues by simply settling the case or conceding certain arguments. This contention is unresponsive. The General Counsel cannot be permitted to coerce a party into settling or conceding arguments by threatening them with an improper subpoena. Due process principles prohibit such a result. The Subpoena accordingly should be revoked and/or modified to require only that Shamrock undertake a good faith effort to identify and produce responsive documents.

C. A Protective Order Should Be Issued To Prevent Dissemination Of Documents That Shamrock Will Produce.

In addition to the foregoing, Shamrock respectfully requests that the presiding Administrative Law Judge enter a protective order limiting the use of Shamrock’s responsive documents to the Hearing and prohibiting the disclosure and/or dissemination of the same, including to the Union. Administrative law judges indisputably have the authority to issue protective orders. *See* NLRB Division of Judges Bench Book § 8-415; *see also Teamsters Local 917 (Peerless Importers)*, 345 NLRB 1010, n.7 (2005). Here, such an order is necessary to safeguard the confidentiality of Shamrock’s sensitive business, commercial, and proprietary information as well as confidential employee data that the Subpoena demands. *See United*

Parcel Service, Inc., 304 NLRB 693, 693 (1991) (issuing protective order limiting use of documents disclosed pursuant to a subpoena duces tecum to the hearing and prohibiting disclosure and dissemination of the same to counsel of record).

IV. CONCLUSION

In truth, the Subpoena is largely an effort to obtain wide-ranging, unfocused discovery. Thus, based on the foregoing, and for good cause shown, Shamrock respectfully requests that the Subpoena be revoked.

Respectfully submitted,

BAKER HOSTETLER LLP
Jay P. Krupin
Nancy Inesta
Todd A. Dawson



Dated: September 1, 2015

Todd A. Dawson
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(216) 696-0740 (facsimile)
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of September, 2015, a true copy of the foregoing was filed electronically in .pdf format with the Regional Director for Region 28 of the National Labor Relations Board through the National Labor Relations Board's Internet website. Copies were also sent by UPS overnight mail to:

Bakery, Confectionery, Tobacco Workers' and Grain Millers
International Union, Local Union No. 232, AFL-CIO-CLC
3117 North 16th Street, Suite 220
Phoenix, Arizona 85016-7679

David A. Rosenfeld, Esq.
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, California 94501



Todd A. Dawson

EXHIBIT

1

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

Custodian of Records
Shamrock Foods Company
2228 North Black Canyon Highway
Phoenix, AZ 85009-2791

To

As requested by Sara S. Demirok, Counsel for General Counsel

whose address is 2600 North Central Avenue, Suite 1400, Phoenix, AZ 85004
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
_____ of the National Labor Relations Board

at Hearing Room, 2600 N Central, Suite 1400

in the City of Phoenix, Arizona

on Tuesday the 8th day of September 2015 at 1:00 PM or any adjourned

or rescheduled date to testify in Shamrock Foods Company
Case 28-CA-150157
(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R. Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

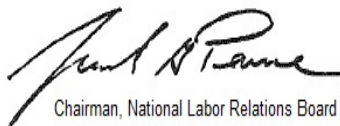
B-1-NZDQ TZ



Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Phoenix, Arizona

Dated: August 25, 2015


Chairman, National Labor Relations Board

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

ATTACHMENT TO SUBPOENA DUCES TECUM

**RE: Shamrock Foods Company
Case 28-CA-150157**

DEFINITIONS AND INSTRUCTIONS

- a. "Document" means any existing printed, typewritten or otherwise recorded material of whatever character, records stored on computer or electronically, records kept on microfiche or written by hand or produced by hand and graphic material, including without limitation, checks, cancelled checks, computer hard drives, discs and/or files and all data contained therein, computer printouts, E-mail communications and records, any marginal or "post-it" or "sticky pad" comments appearing on or with documents, licenses, files, letters, facsimile transmissions, memoranda, telegrams, minutes, notes, contracts, agreements, transcripts, diaries, appointment books, reports, records, payroll records, books, lists, logs, worksheets, ledgers, summaries of records of telephone conversations, summaries of records of personal conversations, interviews, meetings, accountants' or bookkeepers' work papers, records of meetings or conference reports, drafts, work papers, calendars, interoffice communications, financial statements, inventories, news reports, periodicals, press releases, graphs, charts, advertisements, statements, affidavits, photographs, negatives, slides, disks, reels, microfilm, audio or video tapes and any duplicate copies of any such material in the possession of, control of, or available to the subpoenaed party, or any agent, representative or other person acting in cooperation with, in concert with or on behalf of the subpoenaed party.
- b. "Respondent" means Shamrock Foods Company, its subsidiaries, directors, managers, supervisors, agents, and/or representatives.
- c. "Respondent's office facility" means the facility located at 2228 N. Black Canyon Highway, Phoenix, Arizona.
- d. "Respondent's warehouse facility" means the facility located at and 2450 N. 29th Avenue, Phoenix, Arizona.
- e. "Respondent's facilities" means the office and warehouse facilities located in Phoenix, Arizona.
- f. "The Union" means Bakery, Confectionery, Tobacco Workers' and Grain Millers International Union, Local Union No. 232, AFL-CIO-CLC.
- g. "Unit employees" means all full-time and regular part-time employees employed at Respondent's warehouse facility.
- h. "Person" or "persons" means natural persons, corporations, limited liability companies, partnerships, sole proprietorships, associations, organizations, trusts, joint ventures, groups of natural persons or other organizations, or any other kind of entity.

- i. “Period covered by this subpoena” means the period from **January 1, 2014** through the date of this subpoena. The subpoena seeks only documents from that period unless another period is specified. This subpoena request is continuing in character and if additional responsive documents come to your attention after the date of production, such documents must be promptly produced.
- j. Any copies of documents that are different in any way from the original, such as by interlineation, receipt stamp, notation, or indication of copies sent or received, are considered original documents and must be produced separately from the originals.
- k. If any document covered by this subpoena contains codes or classifications, all documents explaining or defining the codes or classifications used in the document must also be produced.
- l. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- m. All documents produced pursuant to this subpoena should be presented as they are kept in the usual course of business or organized by the subpoena paragraph to which the document or set of documents is responsive.
- n. This subpoena applies to documents in your possession, custody, or control.
- o. If a claim of privilege is made as to any document which is the subject of this subpoena, a claim of privilege must be expressly made and you must describe the nature of the withheld document, communication, or tangible thing in a manner that, without revealing information itself privileged or protected, will enable an assessment of the claim to be made.
- p. Unless otherwise stated, this subpoena does not supersede, revoke or cancel any other subpoena(s) previously issued in this proceeding.

DOCUMENTS REQUESTED

With respect to Complaint paragraph 4, provide copies of the following documents:

1. Documents, including, but not limited to, job descriptions, appraisals, bulletins, and memoranda, showing the job title, general and specific duties, authority, responsibilities, hourly wage rates or salaries, fringe benefits, and work schedules, including any changes or amendments thereto, and the dates of such changes for the following individuals:
 - a) Ivan Vaivao
 - b) Mark Engdahl
 - c) Kent McClelland
 - d) Dwayne Thomas
 - e) Joe Remblance
 - f) Armando Gutierrez
 - g) Jerry Kropman
 - h) Natalie Wright
 - i) Brian Nicklen
 - j) Jake Myers
 - k) Leland Scott
 - l) Karen Garzon
 - m) Art Manning
 - n) Zack White
 - o) Bob Beake
 - p) David Garcia
2. Employment applications, work histories, performance appraisals, disciplinary records, and other documents and communications that traditionally would be maintained in a personnel file or its equivalent for the individuals named in Subpoena paragraph 1.
3. Documents showing instances in which any of the individuals named in Subpoena paragraph 1 evaluated the work performance, attendance, or conduct of any of Respondent's Unit employees; made oral or written reports to the Respondent of any alleged work rule violations by Respondent's Unit employees; assigned work to Respondent's Unit employees; or recommended, made, or granted promotions, demotions, disciplinary actions, layoffs, recalls, transfers, suspensions, terminations or any other changes or adjustments in the terms and conditions of employment of Respondent's Unit employees:
4. Documents drafted, typed, e-mailed, signed, or written by, or based in whole or in part on information provided or authorized by any of the named individuals in Subpoena paragraph 1 that relate to any of the following:
 - a) the interview of applicants, hiring of applicants, and/or the recommendation of such action;
 - b) requests by employees to transfer, transfer of employees, and/or the recommendation of such action;

- c) the evaluation of employee work performance, and/or recommendations related to such evaluations;
 - d) granting promotions, wage increases, bonuses, and/or rewards, and/or the recommendation of such action;
 - e) the issuance of disciplinary action, including but not limited to verbal warnings, oral counseling, written warnings, suspensions, and discharges, to employees, and/or the recommendation of such action;
 - f) the assignment of work to employees, employee scheduling, directing and/or requesting that employees work overtime and/or hours different from their normal schedules, and/or the recommendation of such action;
 - g) the direction of employees' work, and/or the recommendation of such action;
 - h) requests for time off, granting or denying requests for time off, and/or the recommendation of such action;
 - i) adjustment of employee grievances, and/or the recommendation of such action;
 - j) the layoff of employees and/or recall of employees from layoff and/or the recommendation of such action;
 - k) the formulation or effectuation of any management or labor relations policies;
 - l) decisions affecting Respondent's operations; and/or
 - m) obtaining credit, authorization or making of purchases, or entry into contracts on behalf of or as an agent of Respondent.
5. Documents that indicate or reflect involvement or participation, including recommendations, by the named individuals in Subpoena paragraph 1 any of the actions described in Subpoena paragraph 4.
6. Documents, including but not limited to meeting minutes, notes, and attendance records, showing the dates of all supervisors' and/or managers' meetings, the names of all individuals who attended such meetings, and what was discussed in such meetings.
7. Organizational charts and all other documents that show the Respondent's managerial structure, hierarchy or chain of command for the Respondent's facility during the period covered by this subpoena, including documents that show any changes to the reporting protocols and chain of command.

*In lieu of providing the information requested in Subpoena paragraphs 1-7, Respondent may stipulate that the named individuals are supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act.

With respect to Complaint paragraphs 5 and 6, provide copies of the following documents:

8. Documents that show or describe what was said during a Town Hall staff meeting about March 31, 2015 at Respondent's warehouse facility, including all documents that indicate the time, date, and location, the identities of those who participated in or were present for the meeting.

9. Documents, including, but not limited to, e-mails, notes, memoranda, written memorializations of oral communications, correspondence, and other communications between or among Respondent's managers, supervisors, representatives or agents, and Unit employees concerning or referencing complaints made about health benefits.
10. A complete copy of Respondent's Associate Handbook and any amendments thereto, including the dates that the amendments were made or enacted, and when and how the amendments were distributed to Unit employees.
11. Documents, including, but not limited to, employee handbooks, work rules, policy manuals, bulletins, memoranda, notices, and any amendments thereto, as will show the rules, regulations, guidelines, and policies and procedures regarding:
 - a) Protecting the Company's Confidential Information
 - b) Non-Disclosure/ Assignment Agreement
 - c) Requests by Regulatory Authorities
 - d) Company Spokespeople
 - e) Electronic and Telephonic Communications
 - f) Improper use of Respondent's E-mail and internet system, including, but not limited to, no downloading of non-business related data, and no participation in web-based surveys without authorization.
 - g) Blogging
 - h) Guidelines to Prohibited Activities
 - i) Reporting Violations
 - j) Guidelines to Appropriate Conduct
 - k) No Solicitation, No Distribution
12. Documents that show the work rules or conditions of employment applicable to Unit employees employed at Respondent's facility at any time during the period covered by this subpoena, including documents showing any changes to the rules, the effective dates of any such changes, and a description or statement of the changes.
13. Documents, including, but not limited to, e-mails, notes, memoranda, written memorializations of oral communications, correspondence, and other communications between or among Respondent's managers, supervisors, representatives or agents concerning or referencing the Union, Union organizers, Union supporters, union activities, union meetings, union literature, and/or union cards.
14. Video recordings, audio recordings, photographs, notes, reports and all other documents showing or describing activities related to the Union or to unions generally, including documents or notes reflecting the circumstances under which such recordings or photographs were obtained.
15. Documents discussing meetings Respondent held with Unit employees during the period covered by this subpoena, where the topic of the Union, or union activities generally, were discussed including documents that show the time, date, and location of each meeting, the

identities of those who spoke at each meeting, the identities of those who attended each meeting.

16. Documents that show or describe a conversation in which Zack White (White) participated about January 25, 2015, at Respondent's warehouse facility, in which the Union or an organizing campaign generally, was mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
17. Documents that show or describe a conversation in which Mark Engdahl (Engdahl) participated about January 28, 2015, at Respondent's warehouse facility, in which the Union, or union activities generally, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
18. Documents that show or describe a conversation in which Engdahl participated about January 28, 2015, at Respondent's warehouse facility, in which Engdahl told employees to make an appointment to come see Respondent regarding their working conditions, including all documents that indicate the time, date, and location of each such conversation or subsequent appointment, the identities of those who participated in or witnessed the conversation or subsequent appointment, and what was said during each such conversation or subsequent appointment.
19. Documents that show or describe a conversation in which Natalie Wright (Wright) participated about January 28, 2015, at Respondent's warehouse facility, in which Unit employee complaints or grievances were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
20. Documents that show or describe a conversation in which Jake Myers participated about January 28, 2015, at Respondent's warehouse facility, in which the Union, or union activities generally, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
21. Documents that show the whereabouts of Art Manning (Manning) on January 28, 2015, including, but not limited to, receipts or credit card statements.
22. Documents, including, but not limited to, text messages and emails, referencing Manning's whereabouts on January 28, 2015.
23. Documents that show or describe a conversation in which Ivan Vaivao (Vaivao) participated about February 5, 2015, at Respondent's warehouse facility, in which Unit employee complaints or grievances were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who

participated in or witnessed the conversation, and what was said during each such conversation.

24. Documents that show or describe conversations in which Vaivao and Wright participated in February 2015, at Respondent's warehouse facility, in which Unit employee complaints or grievances were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
25. Documents that show or describe a conversation in which Vaivao participated about February 24, 2015, at Respondent's warehouse facility, in which the Union, or union activities generally, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
26. Documents that show or describe a conversation in which Vaivao, Brian Nicklen (Nicklen) and a Human Resource Representative participated about March 26, 2015, at Respondent's warehouse facility, in which the Union or union organizing activities generally, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
27. Documents that show or describe a conversation in which Vaivao, Nicklen, and a Human Resource Representative participated about March 26, 2015, at Respondent's warehouse facility, in which work shifts, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
28. The complete personnel and employment files, (excluding tax records, workers compensation forms, and social security information), including documents showing dates of employment, job titles, job duties, dates of job titles, rates of pay, performance evaluations, corrective or disciplinary actions and the reasons for such action, suspensions and the reasons for such action, and discharge and the reasons for such action for Thomas Wallace (Wallace).
29. Documents, including but not limited to disciplinary records, verbal warnings, written warnings, suspension notices, termination forms, employee records, memoranda, letters, notes, e-mails, and text messages, related to the investigation, discipline, suspension, layoff, and/or discharge of Wallace.
30. Documents and communications which set forth, discuss, and/or relate to the reasons for which Wallace was discharged.
31. Documents, including but not limited to recordings or video surveillance footage, on which Respondent relied in discharging Wallace.
32. Documents, including, but not limited to, e-mails, notes, memoranda, written memorializations of oral communications, video recordings, audio recordings,

correspondence, text messages and other communications between or among Respondent's managers, supervisors, representatives or agents concerning or referencing Wallace since January 1, 2015.

33. Documents and communications, including but not limited to memoranda, letters, notes, e-mails, and text messages, related to knowledge and/or suspicion of union activities and/or support by Wallace.
34. The complete personnel and employment files employees who have been investigated, disciplined, suspended, or discharged for acting belligerently, interrupting a supervisor or manager, or leaving a meeting without permission.
35. A complete copy of Respondent's Separation Agreement and Release and Waiver forms, and any amendments thereto, including the dates that the amendments were made or enacted.
36. Documents that show or describe a conversation in which Manning participated about April 27, 2015, at Respondent's warehouse facility, in which union organizing activities taking place in the break room were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
37. Documents that show or describe a conversation in which Engdahl participated about April 29, 2015, at Respondent's warehouse facility, in which in which the Union, or union activities generally, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
38. Documents that show or describe a conversation in which Joe Remblance participated about April 29, 2015, at Respondent's warehouse facility, in which the Union, or union activities generally, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
39. Documents that show or describe a conversation in which David Garcia (Garcia) participated about May 1, 2015, at Respondent's warehouse facility, in which the Union or union cards generally, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
40. Documents that show or describe a conversation in which Garcia participated about May 1, 2015, at Respondent's warehouse facility, in which Unit employee complaints or grievances, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.

41. Documents showing communications sent or received by Garcia, which relate to Union cards.
42. Documents showing communications sent or received by Garcia related to searches of employees' forklifts, clipboards, or other belongings.
43. Documents that show or describe a conversation in which Engdahl and Vaivao participated about May 5, 2015, at Respondent's warehouse facility, in which discussions or heckling related to the Union were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
44. Documents that show or describe a conversation in which Engdahl and Vaivao participated about May 5, 2015, at Respondent's warehouse facility, in which problems on the floor, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
45. Documents that show or describe a conversation in which Engdahl and Vaivao participated about May 5, 2015, at Respondent's warehouse facility, in which heckling, insulting or a potential employee slow-down, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
46. A copy of a letter from Kent McClelland issued to Unit employees on about May 8, 2015.
47. Documents that show or describe a conversation in which Karen Garzon (Garzon) participated about May 25, 2015, at Respondent's warehouse facility, in which the Union or union activities generally, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
48. Documents that show or describe a conversation in which Garzon participated about May 25, 2015, at Respondent's warehouse facility, in which the Union or union activities generally, were mentioned, including all documents that indicate the time, date, and location of each such conversation, the identities of those who participated in or witnessed the conversation, and what was said during each such conversation.
49. Documents showing communications sent or received by Garzon, which relate to Union flyers, flyers unrelated to the Union, or non-work-related documents.
50. Union flyers, flyers unrelated to the Union, or non-work-related literature removed from any part of Respondent's facility by Respondent.
51. Flyers posted at Respondent's facility since about January 1, 2015 referencing the Union, or unions generally and any copies, photographs, videos, or other recordings of such flyers.

52. The payroll records, shown pay-period by pay-period, of Unit employees since October 1, 2014.
53. Since October 1, 2014, documents that show:
 - a) the identity of Respondent's Unit employees;
 - b) the dates of hire;
 - c) the job classifications or positions occupied by such individuals;
 - d) the rates of pay of such individuals;
 - e) the nature and effective dates of all changes to the pay of such individuals;
 - f) all changes to the employment status of such individuals; and
 - g) the dates of any such changes.
54. Documents that show which Unit employees received wage increases on about May 29, 2015, at Respondent's warehouse facility, the reasons why Respondent decided to award wage increases, and what factors Respondent considered in deciding which Unit employees would receive wage increases.
55. Video recordings, audio recordings, photographs, notes, logs, reports and all other documents showing or describing activities related to the Union or to unions generally, including documents or notes reflecting the circumstances under which such recordings or photographs were obtained.
56. Documents as will show the impressions, perceptions, or descriptions of employees' sentiments regarding the Union or unions generally during the period covered by this subpoena, including lists as indicated for each department which employees were perceived by which supervisors as likely supporters or opponents of the Union.
57. The complete personnel and employment files, (excluding tax records, workers compensation forms, and social security information), including documents showing dates of employment, job titles, job duties, dates of job titles, rates of pay, performance evaluations, corrective or disciplinary actions and the reasons for such action, suspensions and the reasons for such action, and discharge and the reasons for such action for Mario Lerma (Lerma).
58. Documents, including but not limited to disciplinary records, verbal warnings, written warnings, suspension notices, termination forms, employee records, memoranda, letters, notes, e-mails, and text messages, related to the investigation or discipline of Lerma.
59. Documents which set forth, discuss, and/or relate to the reasons for which Lerma was disciplined.
60. Documents which set forth, discuss, and/or relate to the reasons for which Lerma was called to Engdahl's office about May 5, 2015.
61. Documents related to a meeting attended by Engdahl, Vaivao, and Lerma in Engdahl's office about May 5, 2015.

62. Documents, including but not limited to recordings or video surveillance footage, on which Respondent relied in disciplining Lerma and/or calling him to Engdahl's office about May 5, 2015.
63. Documents related to employees heckling employees, insulting employees, and/or discussing a potential slow-down on the floor at Respondent's warehouse facility.
64. Documents, including, but not limited to, e-mails, notes, memoranda, written memorializations of oral communications, video recordings, audio recordings, correspondence, text messages and other communications between or among Respondent's managers, supervisors, representatives or agents concerning or referencing Lerma since January 1, 2015.
65. Documents and communications, including but not limited to memoranda, letters, notes, e-mails, and text messages, related to knowledge and/or suspicion of union activities and/or support by Lerma.
66. The complete personnel and employment files employees who have been investigated, disciplined, suspended, or discharged for heckling employees, insulting employees, and/or discussing a potential slow-down.

In Lieu of Provision

IN LIEU OF THE RECORDS REQUESTED IN THE ABOVE PARAGRAPHS, PROVIDED NOTICE IS RECEIVED NO LATER THAN **5:00 P.M., SEPTEMBER 3, 2015**, RESPONDENT MAY MAKE SAID RECORDS AVAILABLE AT THE NATIONAL LABOR RELATIONS BOARD PHOENIX REGIONAL OFFICE, 2600 NORTH CENTRAL AVENUE, SUITE 1400, PHOENIX, ARIZONA TO AN AGENT OR AGENTS OF THE NATIONAL LABOR RELATIONS BOARD FOR HIS, HER OR THEIR INSPECTION, COPYING AND USE NO LATER THAN **SEPTEMBER 4, 2015** PROVIDED FURTHER, SUCH RECORDS AND DOCUMENTS REQUESTED ABOVE, WILL NOT BE REQUIRED TO BE PRODUCED AT HEARING IN THIS MATTER IF THE RESPONDENT AND COUNSEL FOR THE GENERAL COUNSEL ARRIVE AT A STIPULATION WITH REGARD TO THE INFORMATION CONTAINED THEREIN AND SUCH STIPULATION IS RECEIVED IN EVIDENCE BY THE ADMINISTRATIVE LAW JUDGE HEARING THIS MATTER.

EXHIBIT 2

The following list identifies, by Subpoena Request number, which of the objections explained in Section IV of Shamrock's Petition To Revoke are applicable. This list is provided for ease of reference to facilitate consideration of the Petition, and is not intended to be substantive in nature.

REQUEST NOS. 1-7:	Objection No. 1
REQUEST NO. 9:	Objection No. 6
REQUEST NO. 10:	Objection No. 2
REQUEST NO. 12:	Objection No. 2
REQUEST NOS. 13-15:	Objection No. 6
REQUEST NOS. 16-20:	Objection No. 5
REQUEST NOS. 21-22:	Objection No. 4
REQUEST NOS. 23-27:	Objection No. 5
REQUEST NOS. 28-29:	Objection No. 3
REQUEST NO. 32:	Objection No. 3
REQUEST NO. 35:	Objection No. 3
REQUEST NO. 36-45:	Objection No. 5
REQUEST NOS. 47-49:	Objection No. 5
REQUEST NOS. 50-53:	Objection No. 6
REQUEST NO. 55-56:	Objection No. 6
REQUEST NOS. 57-59:	Objection No. 3
REQUEST NO. 63:	Objection No. 6
REQUEST NO. 64:	Objection No. 3
REQUEST NO. 66:	Objection No. 6

EXHIBIT C

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES, SAN FRANCISCO OFFICE

SHAMROCK FOODS COMPANY

and

Case 28-CA-150157

BAKERY, CONFECTIONERY, TOBACCO
WORKERS' AND GRAIN MILLERS
INTERNATIONAL UNION, LOCAL
UNION NO. 232, AFL-CIO-CLC

ORDER

This order addresses the Respondent Company's petitions to revoke three hearing subpoenas served by the General Counsel: subpoena duces tecum B-1-NZDQTZ; and subpoenas ad testificandum A-1-NZBD5J (McClelland subpoena) and A-1-NZBGV5 (Beake subpoena).

I. The Subpoena Duces Tecum

The Company asserts both general and specific objections to the General Counsel's subpoena duces tecum. As discussed below, the Company's objections are denied except with respect to pars. 10 & 12 of the subpoena.

A. General Objections

Timing of subpoena. The Company objects that the subpoena was served too close to the hearing. The objection is denied. The subpoena was served on August 25, 14 days before the scheduled September 8 hearing. This is neither an unreasonably short period of time nor inconsistent with the General Counsel's own guidelines. See *McAllister Towing*, 341 NLRB 394, 397 (2004), *enfd.* 156 Fed. Appx. 386 (2d Cir. 2005); and NLRB Casehandling Manual (Part One), Sec. 10340. Although the subpoena requests numerous documents, this is due to the large number of disputed issues in the case. The Company must make a good faith effort to locate and produce the subpoenaed documents on September 8, as requested. See *McAllister Towing*, above.

Address of custodian of records. The Company objects that its office is not located at the identified address (2228 N. Black Canyon Hwy), asserting that that location is the office of Shamrock Farms Dairy Division, a "distinct entity" whose custodian of records is not within the Company's control. The objection is denied. I take administrative notice that the website for Shamrock Farms identifies a different address for Respondent Shamrock Foods (2540 N. Black Canyon Hwy). However, as noted by the General Counsel, the complaint and other documents had previously been served on the Company at the 2228 address without objection. Further,

notwithstanding the different address, the Company's petition to revoke (p. 1) admits that service of the subpoena was accomplished on its custodian of records on August. 25.

Time period covered by subpoena. The Company objects that the subpoena seeks documents since January 1, 2014, approximately 16 months prior to April 15, 2015 charge. The objection is denied. As indicated by the General Counsel, the time period is reasonable in light of the allegations. See *Machinists Lodge 1424 (Bryan Mfg. Co.) v. NLRB*, 362 U.S. 411, 414–429 (1960); and *Monongahela Power Co.*, 324 NLRB 214, 214–215 (1997) (evidence may be admitted concerning events outside the Sec. 10(b) 6-month limitations period where the events are relevant as background or regarding the respondent's motivation).

Definition of unit. The Company objects to the unit described in the subpoena (all full-time and part-time employees at the Company's warehouse facility), as no union representation petition has yet been filed in that or any other unit, and the described unit includes hundreds of employees. The objection is denied. As indicated by the General Counsel, documents relating to other full-time and part-time warehouse employees may be relevant to the issue of disparate treatment. Further, the Company has not identified any reason why the described unit should be narrowed to a particular division, department, section, or classification in the warehouse. For example, the Company has not proffered any evidence that the employees at the warehouse facility are not subject to common work rules and management/supervision. Mere size of a unit is not a sufficient basis to narrow it for purposes of subpoena. See *NLRB v. G.H.R. Energy Corp.*, 707 F.2d 110, 115 (5th Cir. 1982).

Request for "all" documents. The Company objects that the subpoena is unduly burdensome to the extent it seeks "all" documents that might be responsive, as the Company does not maintain a centralized repository or tracking system. The objection is denied. The subpoena does not actually request "all" documents. Further, it sufficiently identifies the category and geographic and temporal scope of each request. Accordingly, the Company must make a good faith effort to locate and produce documents responsive to the requests. Cf. *McKellips v. Kumho Tire Co.*, 305 F.R.D. 655, 681 (2015); *Nationwide Mutual Fire Insurance Co. v. Kelt*, 2105 WL 1470971, *4 (M.D. Fla. March 31, 2015); *Payne v. Forest River, Inc.*, 2014 WL 7359059, *5 (M.D. La. Dec. 23, 2014) (rejecting similar objections).

Documents not in the Company's possession, custody or control. The company objects to the subpoena to the extent it seeks documents not in the Company's possession, custody, or control. The objection is denied. The subpoena specifically states (par. n) that it only seeks documents in the Company's possession, custody, or control.

Documents protected by attorney-client privilege and work-product doctrine. The Company objects to the subpoena to the extent it encompasses documents protected by the attorney-client privilege and/or work-product doctrine. The objection is denied. The subpoena does not on its face seek such documents, and the Company has failed to specifically identify any such responsive documents or explain why they are protected. To the extent the Company believes that any responsive documents are so protected, it retains the right to withhold them. However, in that event, the Company must provide sufficient information to evaluate the asserted privilege, including a privilege log and supporting affidavits if necessary. See, e.g., *In*

re Grand Jury Subpoena, 274 F.3d 563, 576 (1st Cir. 2001); *Holifield v. U.S.*, 901 F.2d 201, 204 (7th Cir. 1990); and *Friends of Hope Valley v. Frederick Co.*, 268 F.R.D. 643, 651-652 (E.D. Cal. 2010). If the Company fails to demonstrate sufficient grounds for protection, the privilege may be found to have been waived. *In re Grand Jury Subpoena*, above.

Confidential, proprietary, and nonpublic financial information. The Company objects that the subpoena requests also encompass confidential, proprietary, and nonpublic financial information. The Company requests a protective order limiting use of subpoenaed documents to the hearing and prohibiting disclosure or dissemination to the Union. The objection and the request are denied. The Company has the burden to establish “good cause” under FRCP Rule 26(c), “or that disclosure would cause clearly defined and serious harm.” *Impremedia*, 29-CA-131066, unpub. Board order issued Jan. 14, 2015 (2015 WL 193732). The motion must be supported by more than mere conclusory or speculative claims of harm; rather, it must include specific facts or articulated reasoning. See *Serrano v. Cintas Corp.*, 699 F.3d 884, 901(6th Cir. 2012), cert. denied, 134 S. Ct. 92 (2013); *Shingara v. Skiles*, 420 F.3d 301, 306 (3d Cir. 2005); *Foltz v. State Farm Mutual Automobile Insurance Co.*, 331 F.3d 1122, 1130 (9th Cir. 2003); and *In re Terra Intern., Inc.*, 134 F.3d 302, 306, (5th Cir. 1998).

Here, the Company fails to identify the particular responsive documents at issue or explain why they deserve greater protection than routine employment information. See *Richmond Times Dispatch*, 5-CA-29157 et al, unpub. Board order issued August 1, 2002 (holding that the judge improperly issued a protective order governing the production and exchange of subpoenaed documents to the extent it covered timesheets that showed hours worked or wages paid to employees); and *Waterbed World*, 289 NLRB 808, 809 (1988) (denying respondent’s motion for a protective order, which would have barred disclosure to the discriminatees of documents attached to its motion to reopen the record, because of the “scanty and conclusory nature of the respondent’s averments” and the Board’s policy of affording discriminatees the right to hear testimony except under certain circumstances).¹

Nor has the Company explained why its concerns cannot be satisfied by simply redacting private, confidential, propriety, or nonpublic financial information from the documents. See generally FRCP Rule 26(c); and *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786-789 (3d Cir. 1994). See also *Rangel v. City of Chicago*, 2010 WL 3699991 (N.D. Ill. 2010) (unpub.); and *Kelly v. City of New York*, 2003 WL 548400 (S.D. N.Y. 2003) (unpub.).

As with attorney client communications or work product, if the Company believes that particular responsive documents contain private, confidential, proprietary, or nonpublic financial information, it retains the right to withhold or redact them. However, in that event, the Company must provide sufficient information to evaluate the claim, including a log and supporting affidavits if necessary. If the Company fails to demonstrate sufficient grounds for protection, the claim may be found to have been waived.

¹ In *UPS*, 304 NLRB 693 (1991), the case cited by the Company, no exceptions were filed to the judge’s issuance of a protective order. Thus, it has no precedential weight on that issue.

B. Specific Objections:

Pars. 1 – 7 (documents regarding status of alleged supervisors and agents). The Company objects that the time period covered by these requests should be limited to the period that the named individuals held their listed titles. The Company also objects to the request for documents relating to attendance at management meetings (par. 6) because attending management meetings is not evidence of supervisory authority. The objections are denied. As indicated above, the subpoena only seeks documents over a 16-month period, which is a reasonably short time period. Further, the Board in past cases has considered attendance at management meetings as secondary indicia of supervisory authority where primary indicia is present. See, e.g., *Rogers Electric, Inc.*, 346 NLRB 508, 514 (2006).

Pars. 10 & 12 (documents relating to work rules). The Company objects that, unlike paragraph 11, these requests are not limited to the rules at issue. The objection is granted and the requests are limited to those work rules identified in the complaint or that the Company will rely on to support its defenses to the complaint allegations.

Pars. 16–20, 23–27, 36–45, 47–49 (documents relating to 8(a)(1) statements). The Company objects that some of these requests lack date or location limitations, and that some seek documents indicating the time, date, and manner of the statement even though the complaint already alleges the dates. The objection is denied. The requests describe with sufficient particularity the documents being sought, seek information reasonably relevant to the matters at issue, and otherwise satisfy the requirements of Section 11 of the Act and Section 102.31 of the Board's rules.

Pars. 21–22 (documents relating to alleged surveillance by Art Manning at Denny's). The Company objects that it is not in possession of Manning's personal credit card receipts and that Manning is not a supervisor. The objection is denied. As indicated above, the subpoena specifically states that the Company is only required to produce documents that are in its possession, custody, or control.

Pars. 28–29, 32, 35, 57–59, 64 (documents relating to alleged discriminatees Thomas Wallace and Mario Lerma). The Company objects that these requests are overbroad both as to time frame (Jan. 1, 2014, or Jan. 1, 2015), and substance. The objection is denied for the same reasons previously discussed.

The Company also objects that request 35 is not limited to the separation agreement presented to Wallace. The objection is denied as is not clear that the relevant complaint allegation (5(r)) is limited to the separation agreement presented to Wallace.

Pars. 9, 13–15, 50–53, 55–56, 63, 66. The Company objects that these requests lack any relationship to the complaint allegations and seek information that could be used by the Union to support its organizing campaign. The objection is denied. The requests seek information that is reasonably relevant to the matters at issue and otherwise satisfy the requirements of Section 11 of the Act and Sec. 102.31 of the Board's rules. Further, the requests do not on their face seek personal contact information (addresses or phone numbers) of employees.

II. The Subpoenas Ad Testificandum

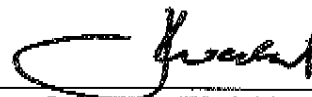
The General Counsel's subpoenas ad testificandum direct two Company officials to appear and testify: Kent McClelland and Bob Beake. McClelland is the Company's president and chief executive officer (CEO). Beake is the Company's senior vice president for human resources. The Company objects to the subpoenas because the only allegation naming McClelland concerns a May 8 letter that speaks for itself and was prepared with the advice of counsel, and the complaint does not allege that Beake committed any violations or even reference him.

The petition to revoke the subpoenas ad testificandum is denied. Subpoenaing high-level company managers with first-hand knowledge of relevant facts to testify during the case in chief as adverse witnesses pursuant to FRE 611(c) is a common and accepted practice and method of proof. See, e.g., NLRB Casehandling Manual (Part One) Sec. 10394.3 (Dec. 2009); and 43 Am. Jur. Proof of Facts 2d 699, Sec. 9, Practice Comment: Adverse party testimony (database updated Sept. 2015).

Here, as indicated above, the Company's answer denies that McClelland is a supervisor or agent of the Company; denies the 8(a)(1) allegations regarding the May 8 letter (par. 5(x)); and also denies the numerous other 8(a)(1) and (3) allegations of the complaint. The General Counsel asserts that McClelland's testimony will relate to many of these disputed allegations and issues, not just the May 8 letter. As for the Company's assertion that the May 8 letter was prepared with advice of counsel, the General Counsel states that there is no intent or plan to elicit privileged communications between McClelland and counsel about the letter. In any event, the Company will have an opportunity at the hearing to assert appropriate privilege or other objections under the Federal Rules of Evidence when questions are asked.

With respect to Beake, on September 2, the General Counsel gave notice of intent to amend the complaint to add him as an alleged supervisor and agent of the Company. Further, the General Counsel asserts that Beake's testimony is relevant to the alleged 8(a)(3) discharge of Wallace because Beake conducted a meeting where Wallace allegedly engaged in protected concerted activity, and the Company's position is that Wallace was discharged for misconduct at the meeting.

Dated, San Francisco, California, September 4, 2015



Jeffrey D. Wedekind
Administrative Law Judge

Served by facsimile upon the following:

For the NLRB:

Elise F. Oviedo, Esq., - Fax: 702.388.6248

Sara Demirok, Esq. - Fax: 602.640.2178

For the Respondent:

Jay Krupin, Esq.

Nancy Inesta, Esq. - Fax: 310.820.8859

For the Charging Party:

David A. Rosenfeld, Esq. - Fax: 510.337.1023

EXHIBIT D

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

SHAMROCK FOODS COMPANY

and

Case 28-CA-150157

**BAKERY, CONFECTIONERY, TOBACCO
WORKERS' AND GRAIN MILLERS
INTERNATIONAL UNION, LOCAL
UNION NO. 232, AFL-CIO-CLC**

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by Bakery, Confectionery, Tobacco Workers' and Grain Millers International Union, Local Union No. 232, AFL-CIO-CLC (the Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Shamrock Foods Company (Respondent) has violated the Act as described below.

1. (a) The charge in this proceeding was filed by the Union on April 15, 2015, and a copy was served on Respondent by U.S. mail on April 16, 2015.

(b) The first amended charge in this proceeding was filed by the Union on May 22, 2015, and a copy was served on Respondent by U.S. mail on that same date.

(c) The second amended charge in this proceeding was filed by the Union on June 26, 2015, and a copy was served on Respondent by U.S. mail on that same date.

2. (a) At all material times, Respondent has been a corporation with an office and place of business in Phoenix, Arizona (Respondent's facility), and has been engaged in the wholesale distribution of food products.

(b) In conducting its operations during the 12-month period ending April 15, 2015, Respondent purchased and received at its facility goods valued in excess of \$50,000 directly from points outside the State of Arizona.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondents within the meaning of Section 2(11) of the Act and agents of Respondents within the meaning of Section 2(13) of the Act:

Ivan Vaivao	-	Warehouse Operations Manager
Mark Engdahl	-	Vice-President of Operation Foods Service
Kent McClelland	-	Chief Executive Officer
Dwayne Thomas	-	Third Shift Supervisor
Joe Remblance	-	Safety Manager
Armando Gutierrez	-	Warehouse Supervisor
Jerry Kropman	-	Plant Manager
Natalie Wright	-	Manager of Human Resources
Brian Nicklen	-	Forklift Manager
Jake Myers	-	Day Systems Shipping Supervisor
Leland Scott	-	Night Shift Dock Supervisor
Karen Garzon	-	Sanitation Supervisor
Art Manning	-	Floor Captain
Zack White	-	Floor Captain

5. (a) About March 31, 2015, Respondent's employee Thomas Wallace concertedly complained to Respondent regarding the wages, hours, and

working conditions of Respondent's employees, by criticizing the health benefits offered by Respondent to employees during a Town Hall staff meeting at Respondent's facility.

(b) Since about October 15, 2014, Respondent has maintained the following overly-broad and discriminatory rules in its Associate Handbook:

(1) **Protecting the Company's Confidential Information**

The Company's confidential information is a valuable asset and includes: information, knowledge, or data concerning . . . associates, . . . Company manuals and policies, . . . calendars and/or day-timers that contain customer contact and other customer information, [and] compensation schedules[.]

* * *

All confidential information must be used for Company business purposes only. Every associate, agent, and contractor must safeguard it. **THIS RESPONSIBILITY INCLUDES NOT DISCLOSING THE COMPANY CONFIDENTIAL INFORMATION, INCLUDING INFORMATION REGARDING THE COMPANY'S PRODUCTS OR BUSINESS, OVER THE INTERNET, INCLUDING THROUGH SOCIAL MEDIA.**

(2) **Non-Disclosure/ Assignment Agreement.**

When you joined the Company, you signed an agreement to protect and hold confidential the Company's proprietary information. This agreement remains in effect for as long as you work for the Company and after you leave the Company. Under this agreement you may not disclose the Company's confidential information to anyone or use it to benefit anyone other than the Company without the prior written consent of an authorized Company officer.

(3) **Requests by Regulatory Authorities.**

All government requests for information, documents or investigative interviews must be referred to the Company's Human Resources Department.

(4) **Company Spokespeople.**

The Company has an established Spokesperson who handles all requests for information from the Media. Ms. Sandra Kelly at the

Dairy is the person who has been designated to provide overall Company information or to respond to any public events or issues for which we might receive press calls or inquiries. If you believe that an event or situation may result in the press seeking additional information, please contact Ms. Kelly at the Dairy to advise her of the nature of the situation so that she may be prepared for any calls.

(5) **Electronic and Telephonic Communications**

All electronic and telephonic communications systems and all communications and information transmitted by, received from, or stored in these systems are the property of Shamrock and as such are to be used solely for job-related purposes. The use of any software and business equipment, including, but not limited to, facsimiles, computers, the Company's E-mail system, the Internet, and copy machines for private purposes is strictly prohibited.

* * *

Moreover, improper use of the E-mail system (e.g., spreading offensive jokes or remarks), including the Internet, will not be tolerated.

(6) Monitoring Use

Shamrock reserves the right to use software and blog-search tools to monitor comments or discussions about company representatives, customers, vendors, other associates, the company and its business and products, or competitors that associates or non-associates post anywhere on the Internet, including in blogs and other types of openly accessible personal journals, diaries, and personal and business discussion forums.

(7) E-Mail

Associates are prohibited from using any Instant Messaging applications except those provided specially by Shamrock for Associate's business use.

(8) World Wide Web

As a general rule, associates may not forward, distribute, or incorporate into another work, material retrieved from a Web site or other external system.

* * *

2. No Downloading of Non-Business Related Data: The Company allows the download of files from the Internet. However, downloading

files should be limited to those that relate directly to Shamrock business.

* * *

4. No Participation in Web-Based Surveys without Authorization:
When using the Internet, the user implicitly involves Shamrock in his/her expression. Therefore, users should not participate in Web or E-mail based surveys or interviews without authorization. (page 60)

(9) Blogging

The following rules and guidelines apply to blogging, whether blogging is done for Shamrock on company time, on a personal Web site during non-work time, or outside the workplace. The rules and guidelines apply to all associates.

(A) Shamrock discourages associates from discussing publicly any work-related matters, whether confidential or not, outside company-authorized communications. Nonofficial company communications include Internet chat rooms, associates' personal blogs and similar forms of online journals or diaries, personal newsletters on the Internet, and blogs on Web sites not affiliated with, sponsored, or maintained by Shamrock.

(B) Associates have a duty to protect associates' home addresses . . . and other personal information and . . . financial information . . . and nonpublic company information that associates can access.

(C) Associates cannot use blogs to harass, threaten, libel, or slander, malign, defame or disparage, or discriminate against co-workers, managers, customers, clients, vendors or suppliers, and organizations associated or doing business with Shamrock, or members of the public, including Web site visitors who post comments about blog contents.

(D) Associates cannot use Shamrock's logo or trademarks or the name, logo, or trademarks of any business partner, supplier, vendor, affiliate, or subsidiary on any personal blogs or other online sites unless their use is sponsored or otherwise sanctioned, approved, or maintained by Shamrock.

* * *

Associates cannot post on personal blogs Shamrock's copyrighted information or company-issued documents bearing Shamrock's name, trademark, or logo.

(E) Associates cannot post on personal blogs photographs of company events, other associates or company representatives engage in Shamrock's business, or company products, unless associates have received Shamrock's explicit permission.

(F) Shamrock discourages associates from linking to Shamrock's external or internal Web site from personal blogs.

(10) *Guideline to Prohibited Activities*

The following behaviors are examples of previously stated or additional actions to activities that are prohibited and considered improper use of the Internet, E-mail or voicemail systems provided by Shamrock. These examples are provided as guidelines only and are not all-inclusive:

(A) Sending or posting confidential material, trade secrets, or proprietary information outside of the organization.

(B) Refusing to cooperate with security investigations.

(C) Sending or posting chain letters, solicitations, or advertisements not related to business purposes or activities.

(D) Sending or posting messages that disparage another organization.

(11) *Reporting Violations*

Shamrock requests and urges associates to use official company communications to report violations of Shamrock's blogging rules and guidelines, customers' or associates' complaints about blog content, or perceived misconduct or possible unlawful activity related to blogging, including security breaches, misappropriation or theft of proprietary business information, and trademark infringement.

Associates can report actual or perceived violations to supervisors, other managers, or to Human Resources.

(12) *Reporting Violations*

As a condition of employment and continued employment, associates are required to sign an Electronic and Telephonic Communications

Acknowledgement Form. Applicants are required to sign this form on acceptance of an employment offer by Shamrock.

(13) Guidelines to Appropriate Conduct

Listed below are some of the rules and regulations of Shamrock. This list should not be viewed as all-inclusive. It is intended only to illustrate the types of behavior and conduct that Shamrock considers inappropriate and grounds for disciplinary action up to and including termination of employment without prior warning, at the sole discretion of the company, including, but not limited to, the following:

(A) Theft and/or deliberate damage or destruction of property not belonging to the associate, including the misuse or unauthorized use of any products, property, tools, equipment of any person or the unauthorized use of any company-owned equipment.

(B) Any act that interferes with another associate's right to be free from harassment or prevents an associate's enjoyment of work . . . or conduct that creates a disturbance in the workplace.

(14) No Solicitation, No Distribution

The conducting of non-company business related activities is prohibited during the working time by either the associate doing the soliciting or the associate being solicited or at any time in customer or public areas. Associates may not solicit other associates under any circumstances for any non-company related activities.

The distribution of non-company literature, such as leaflets, letters or other written materials by an associate is not permitted . . . any time in working areas or in customer and public areas.

(15) No Solicitation, No Distribution

If you would like to post any Shamrock business-related materials, please see your Department Manager, the General/Branch Manager or the Human Resources Representative. Only these individuals are authorized to approve and post information on Shamrock bulletin boards.

(c) Since about October 15, 2014, Respondent has, by maintaining policies in its Associate Handbook, threatened its employees with discipline and/ or discharge

for violating the overly-broad and discriminatory work rules as described in paragraphs 5(b)(5) and 5(b)(9) through 5(b)(12).

(d) Since about October 15, 2014, Respondent has, by maintaining the work rule as described in paragraph 5(b)(6), created an impression among its employees that their union and other protected activities were under surveillance by Respondent.

(e) Since about October 15, 2014, Respondent has, by maintaining the work rule as described in paragraph 5(b)(11), solicited its employees to report other employees who engage in union and other protected activities to Respondent.

(f) About January 25, 2015, Respondent, by Zack White, at Respondent's facility:

(1) interrogated its employees about their union membership, activities, and sympathies of other employees; and

(2) by telling its employees that there were rumors in the warehouse about an organizing campaign, created an impression among its employees that their union activities were under surveillance by Respondent.

(g) About January 28, 2015, Respondent, by Mark Engdahl (Engdahl), at Respondent's facility:

(1) threatened its employees with loss of benefits by telling employees that when employees are represented by a union, the slate is wiped clean on wages, benefits, and other working conditions once collective bargaining begins; and

(2) granted employees benefits by telling employees who complained about working conditions to make an appointment to come see Respondent.

(h) About January 28, 2015, Respondent, by Natalie Wright (Wright), at Respondent's facility, by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if its employees refrained from union organizational activity.

(i) About January 28, 2015, Respondent, by Jake Myers, at Respondent's facility, interrogated its employees about their union membership, activities, and sympathies.

(j) About January 28, 2015, Respondent, by Art Manning (Manning), at Denny's restaurant on I-17 and Thomas Road in Phoenix, Arizona, engaged in surveillance of its employees engaged in union activities.

(k) About February 5, 2015, Respondent, by Ivan Vaivao (Vaivao), at Respondent's facility, by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if its employees refrained from union organizational activity.

(l) About mid-February, 2015, a more precise date being unknown to the General Counsel, by Vaivao and Wright, at Respondent's facility, by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if its employees refrained from union organizational activity.

(m) About February 24, 2015, Respondent, by Vaivao, at

Respondent's facility:

(1) by telling its employees that Respondent had an idea of who was organizing, created an impression among its employees that their union activities were under surveillance by Respondent; and

(2) by asking its employees to raise their hand to let Respondent know if another employee contacted them, asked its employees to ascertain and disclose to Respondent the union membership, activities, and sympathies of other employees.

(n) About March 26, 2015, Respondent, by Vaivao, Brian Nicklen (Nicklen) and a Human Resource Representative, whose name is currently unknown to the General Counsel, created an impression among its employees that their union activities were under surveillance by Respondent by:

(1) telling its employees that Respondent knows everything that is going on;

(2) telling its employees that they should know that Respondent knows who they are;

(3) telling its employees that Respondent knows exactly who they are; and

(4) telling its employees that Respondent knew there was a union meeting off property a few weeks ago and that Respondent knew who attended these meetings.

(o) About March 26, 2015, Respondent, by Vaivao, Nicklen and a Human Resource Representative, whose name is currently unknown to General Counsel,

informed its employees that it would be futile for them to select the Union as their bargaining representative by telling employees that shifts cannot be changed.

(p) About April 6, 2015, Respondent discharged employee Thomas Wallace (Wallace).

(q) Respondent engaged in the conduct described above in paragraph 5(p), because Wallace engaged in the conduct described above in paragraph 5(a), and to discourage employees from engaging in these or other concerted activities.

(r) About April 6, 2015, Respondent promulgated and since then has maintained the following overly-broad and discriminatory rules in its Separation Agreement and Release and Waiver as presented to employee Wallace on that same date:

(1) Paragraph 9

Because the information in this Separation Agreement is confidential, it is agreed that you will not disclose the terms of this Separation Agreement to anyone, except that you may disclose the terms of this Separation Agreement to your family, your attorney, your accountant, a state unemployment office, and to the extent required by a valid court order or by law.

(2) Paragraph 10

All information, whether written or otherwise, regarding the Released Parties' businesses, including but not limited to financial, personnel or corporate information . . . are presumed to be confidential information of the Released Parties for purposes of this Agreement.

(3) Paragraph 12

You may not use/disclose any of the Company's Confidential Information for any reason following your termination and during the transition period.

(4) Paragraph 13

You agree not to make any disparaging remarks or take any action now, or at any time in the future, which could be detrimental to the Released Parties.

(s) About April 27, 2015, Respondent, by Manning, at

Respondent's facility:

(1) by telling its employees that Respondent knew which employees announced they were organizing for the union in the break room at Respondent's facility, engaged in surveillance of employees engaged in union activities; and

(2) threatened its employees with unspecified reprisals by telling employees that they had better watch their back because Respondent was watching.

(t) About April 29, 2015, Respondent, by Engdahl, at

Respondent's facility:

(1) by telling its employees that Respondent understood who was behind the Union, created the impression among its employees that their union activities were under surveillance by Respondent;

(2) threatened its employees with unspecified reprisals by telling its employees the Union will hurt them;

(3) threatened its employees with unspecified reprisals by telling employees the Union will hurt everybody in the future;

(4) by telling its employees that through collective bargaining, Respondent does not have to agree to anything, informed employees that it would be futile for them to select the Union as their bargaining representative.

(u) About April 29, 2015, Respondent, by Joe Remblance, at Respondent's facility:

(1) interrogated its employees about their union membership, activities, and sympathies; and

(2) by watching its employees talk with each other during non-working time and immediately asking them what they were discussing, engaged in surveillance of employees engaged in union activities.

(v) About May 1, 2015, Respondent, by David Garcia, at Respondent's facility:

(1) by searching through the personal belongings of its employees, engaged in surveillance of its employees engaged in union activities;

(2) created the impression among its employees that their union activities were under surveillance by:

(A) telling its employees that Respondent knew that employees handed a union card to another employee in the South End break room at Respondent's facility; and

(B) informing its employees that Respondent was looking for union cards.

(3) by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if its employees refrained from union organizational activity.

(w) About May 5, 2015, Respondent, by Engdahl and Vaivao, at Respondent's facility:

(1) threatened its employees with unspecified reprisals, by telling its employees that discussions and heckling related to the Union would not be tolerated;

(2) by telling its employees that Respondent knew that there were problems on the floor, created the impression among its employees that their union activities were under surveillance by Respondent; and

(3) promulgated an overly-broad and discriminatory rule that heckling, insulting or potential slow-down by its employees who did not share a similar point of view would not be tolerated in response to its employees' organizing activities.

(x) About May 8, 2015, Respondent, by a letter issued to its employees from Kent McClelland:

(1) promulgated and has since maintained an overly-broad and discriminatory rule prohibiting its employees from engaging in unlawfully coercive behavior or bullying, in response to employees' organizing activities;

(2) asked its employees to ascertain and disclose to Respondent the union membership, activities, and sympathies of other employees, by telling its employees to report co-workers who violate the rule described above in paragraph 5(x)(1); and

(3) threatened its employees with legal prosecution if they violate the rule as described above in paragraph 5(x)(1).

(y) About May 25, 2015, Respondent, by Karen Garzon (Garzon), at Respondent's facility:

(1) interrogated its employees about their union membership, activities, and sympathies; and

(2) by removing Union flyers from non-work areas while permitting other non-work related literature to remain in non-work areas, selectively and disparately enforced Respondent's overly-broad and discriminatory no-solicitation/no-distribution rule.

(z) About May 29, 2015, Respondent, by Vaivao, at Respondent's facility, by increasing the wage rate to certain of its employees, granted benefits to its employees to dissuade its employees from supporting or voting for the Union.

(aa) About June 15, 16, 17 and July 8, 2015, Respondent, by Garzon, at Respondent's facility, by removing Union flyers from non-work areas while permitting other non-work related literature to remain in non-work areas, selectively and disparately enforced Respondent's overly-broad and discriminatory no-solicitation/no-distribution rule.

6. (a) About May 5, 2015, Respondent disciplined its employee Mario Lerma (Lerma).

(b) Respondent engaged in the conduct described above in paragraph 6(a) because Lerma assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

7. By the conduct described above in paragraph 5, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

8. By the conduct described above in paragraph 6, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

9. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

As part of the remedy for the unfair labor practices alleged above in paragraphs 5 through 6, the General Counsel seeks an Order requiring that the Notice be read to employees during working time by Kent McClelland, in both English and Spanish and with a sign language interpreter. Alternatively, the General Counsel seeks an order requiring that Respondent have a Board agent read the notice to employees during worktime in the presence of Respondent's supervisors and/or agents identified above in paragraph 4.

As part of the remedy for the unfair labor practices alleged above in paragraphs 5(p) and 5(q), the General Counsel seeks an order requiring that Respondent reimburse discriminatee(s) for all search-for-work and work-related expenses regardless of whether the discriminatee(s) received interim earnings in excess of these expenses, or at all, during any given quarter, or during the overall backpay period. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before August 4, 2015, or postmarked on or before August 3, 2015.**

Respondent should file the original copy of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile

transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on September 8, 2015, 1:00 p.m. the Hearing Room, National Labor Relations Board, 2600 North Central Avenue, Suite 1400, Phoenix, Arizona, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Phoenix, Arizona, this 21st day of July 2015.


Cornele A. Overstreet, Regional Director

Attachments

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 28-CA-150157

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules and regs part 102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.
- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

SHAMROCK FOODS COMPANY

and

Case 28-CA-150157

**BAKERY, CONFECTIONERY, TOBACCO
WORKERS' AND GRAIN MILLERS
INTERNATIONAL UNION, LOCAL
UNION NO. 232, AFL-CIO-CLC**

AMENDMENT TO COMPLAINT

Pursuant to Section 102.17 of the Rules and Regulations of the National Labor Relations Board, the Complaint and Notice of Hearing issued on July 21, 2015, is amended to delete the present paragraph 6 and substitute in its place the following paragraph 6; and to amend the second unnumbered paragraph on page 16 as follows:

6. (a) About May 5, 2015, Respondent disciplined its employee Mario Lerma (Lerma).

(b) Respondent engaged in the conduct described above in paragraph 5(p), because Wallace assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(c) Respondent engaged in the conduct described above in paragraph 6(a), because Lerma assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

The second unnumbered paragraph on page 16 is amended to insert after the words "paragraphs 5(p)" the words "5(q) and 6(b)."

The remainder of the Complaint and Notice of Hearing is unchanged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the amendment to the complaint.

The answer must be **received by this office on or before August 27, 2015, or postmarked on or before August 26, 2015**. Respondent should file the original copy of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to an amendment to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may

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AFFIDAVIT OF SERVICE OF: AMENDMENT TO COMPLAINT

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on August 13, 2015, I served the above-entitled document(s) by certified mail, as noted below, upon the following persons, addressed to them at the following addresses:

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2228 North Black Canyon Highway
Phoenix, AZ 85009-2791
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Jay Krupin, Attorney at Law
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Alameda, CA 94501

August 13, 2015
Date

Kay Davis, Designated Agent of NLRB
Name

Signature

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

SHAMROCK FOODS COMPANY

and

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INTERNATIONAL UNION, LOCAL
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NOTICE OF INTENT TO AMEND COMPLAINT

Pursuant to Section 102.17 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, at the outset of the hearing in the above-captioned matter, Counsel for the General Counsel will move to amend the Complaint and Notice of Hearing (Complaint), dated July 21, 2015, and previously amended on August 13, 2015, by adding the names and positions of the following individuals to the list of individuals appearing in paragraph 4 of the Complaint:

Bob Beake	-	Vice President of Human Resources
David Garcia	-	Forklift Manager

Dated at Las Vegas, Nevada, this 2nd day of September 2015.

/s/ Elise F. Oviedo

Elise F. Oviedo, Counsel for the General Counsel
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